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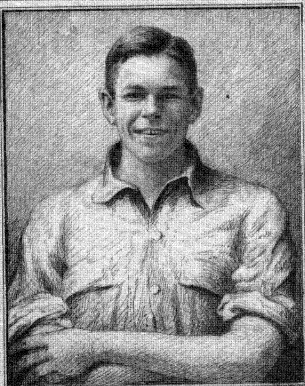
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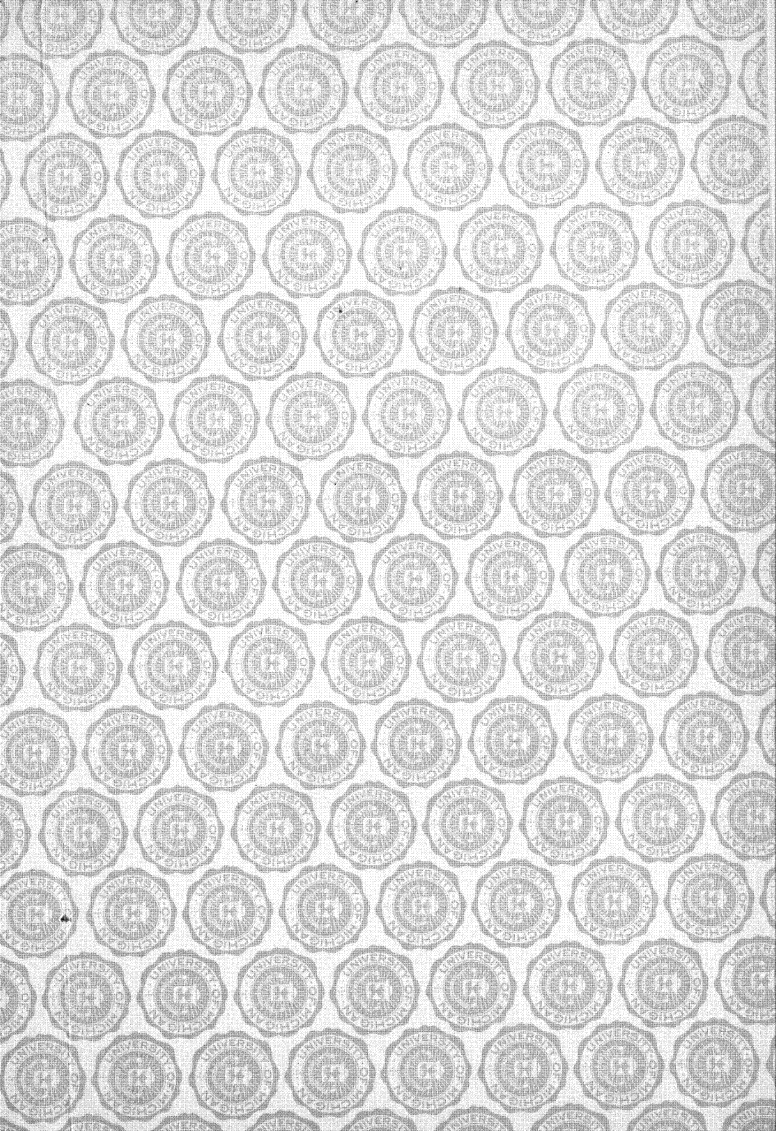
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In Memory of
STEPHEN SPAULDING
1907 - 1923
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UNIVERSITY OF MICHIGAN

March 4, 1927



THE REPLY

OF

Hon. Walter F. Frear

GOVERNOR OF HAWAII

TO THE COMPLAINT

OF

HON. JONAH KUHIO KALANIANAOLE

Delegate in Congress from Hawaii

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Stephen Goulding, Mem. Coll.
Col. Mod. Spaulding
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EXECUTIVE CHAMBER,
HONOLULU, HAWAII.

January 30, 1912.

Sir:—

I have the honor to submit the following reply to the complaint of the Delegate in Congress from Hawaii against my administration and protest against my reappointment as Governor of Hawaii:

CHARGES AND SPECIFICATIONS.

The complaint, in printed form, contains general charges (Complaint, pp. 1-6) and specifications (Complaint, pp. 8-48),—the first five pages of the specifications being also of a somewhat general nature.

Although under the circumstances I might be justified in setting forth in this reply the origin of these charges and specifications and the motives which have prompted them, I prefer to confine myself here to what appears on their face.

Two things stand out strikingly in the specifications: first, that the complainant has indulged in a reckless disregard of the truth in what he states as facts, and, secondly, that the facts are as a rule matters of record and so beyond dispute.

If the general charges have no better basis than the specifications, they must be the product of either inexcusable ignorance or audacious insincerity.

The complaint is in substance that there is too much concentration of power and too little democracy in Hawaii and that I have not succeeded in correcting this condition; and, more particularly, as summarized on the first page of the specifications (Complaint, p. 8), that during my administration the public lands have been administered too much in the interests of the sugar plantations and too little in the interests of homesteaders.

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and that I have failed to inaugurate or permit measures for the regulation of transportation monopolies.

GENERAL.

The complainant concedes to me ability and a desire to have homesteads, but affirms that because of matrimonial and social ties and reactionary leanings I am not sufficiently in earnest to cut loose from old policies. He admits that the task is "a very delicate and difficult one at best" and confesses himself "unable to suggest just what ought to be done." He states that he does "not intend to attack the sugar industry," because "it keeps the Territory up in every direction and a disastrous blow to the sugar plantations would bring dire confusion in all directions and to all classes," but at the same time suggests that the plantations be "cut off from getting labor, tariff benefits and public lands," except upon condition that they make "a success of homesteads and home building." He frankly admits that he also has been too closely affiliated with the plantations, but claims to have at last experienced a conversion of heart and takes this method of making his confession and suggesting remedies for the first time. He concedes apparently that I have been a constant advocate of better conditions throughout my administration, as shown by my inaugural address, from which he quotes copiously, and by my reports to the Interior Department, my messages to the Legislature and other utterances, but endeavors to harmonize these with his complaint by the theory that I have been blind to the real situation. He does not explain why it is that here where I am known my strongest support comes from the progressives and those who are ardent workers for genuine homesteading; or why, as shown in the replies herein to his specifications, he is so solicitous for the interests of fake homesteaders. He relies much upon the articles by Ray Stannard Baker in recent numbers of the American Magazine, which he regards as "most accurate as to facts," in every particular except "one." That "one" is not the statement, and he takes no exception to this, that "the busi-

ness interests of the islands" pay his secretary's salary, which is said to be larger than that of the Delegate himself, and that "in all matters of real importance to the big interests of the islands he is the actual representative. He, with the high-salaried legal agent of the Planters' Association, who is always in close attendance during congressional sessions, are the real ambassadors of King Sugar from Hawaii." The "one" statement to which he takes exception in these articles which he declares are so accurate in all other respects is that in regard to me; he finds difficulty in explaining such statements as that, "the Territorial Government, led by Governor Frear, succeeded in getting the land laws so changed in Congress as to encourage homesteading by citizen settlers." Their "idea is to get in white people who will really live upon and work the land"; or the statement in which Mr. Baker speaks of "the opposition of the Governor to an attempt on the part of the sugar planters to get the laws further amended so that the cane land leased by the government to them shall be leased again to them and not be divided among settlers"; or the statement that I am a "progressive," though "mildly" so, and that I have thrown my influence with the group that "tends to more democracy rather than less. It would like to see more white citizens and settlers, it would entrust more and more power to the present local governments, it would pursue a vigorous policy of popular education no matter what the ultimate outcome, it already demands an elective commission government for the City of Honolulu and a direct primary system"; or the statement in which, after referring to the Territorial Bureau of Immigration as representing the progressive element among the planters, he says that, "it seeks to bring in white men and to offset oriental immigration by that of peasant white labor from Europe. It hopes thus to 'Americanize' the islands. It has the hearty support of men like Governor Frear and Dr. Victor S. Clark, who is the leading spirit in the territorial board and who is intensely in earnest on this subject."

I must confess that I am neither a socialist nor an anarchist and that I believe in constructive rather than destructive policies,

and I hope that I am not going too far in saying that my administration has been known in Hawaii at least not as reactionary or retrogressive but as peculiarly constructive and progressive. No one realizes more than I that industrial and social conditions in Hawaii are far from perfect; no one is more earnest than I in endeavoring to correct these conditions; nor has anyone greater faith that they can be corrected. But that any one man can bring about Utopian conditions in a few years is a feat that I do not pretend to be able to accomplish—a feat, indeed, that has not been accomplished in the ninety years since civilization obtained a footing in Hawaii, and has not been accomplished in far longer periods in other countries under more favorable conditions. I have given myself unreservedly to this work day and night. My method has been that of investigation and logical action based thereon. I have opposed special interests whether large or small without discrimination where their desires seemed to conflict with the public interests, and have found it more difficult to oppose the small than the large ones. The “interests,” I fear, do not agree with the complainant that I have been too friendly toward them. Much progress has been made, but upon this complainant is silent.

The portion of this reply that is directed to the general charges is made necessary by the nature of the charges and the request that they be replied to. For this reason I am compelled to speak more personally of myself and of my work than I would otherwise feel justified in doing. While in most cases of legislation referred to herein, the bills have either been drafted by me or by others at my request and revised by me, I do not wish to assume more than my share of credit for the good work that has been accomplished. I have received able assistance from many others. Too much credit cannot be given the Legislature itself for most commendable and gratifying readiness to support good measures and reject bad ones. Moreover, many other splendid things, not here referred to, have been accomplished in and out of the Legislature for which I am entitled to little or no credit.

I will take up, first, the land question, setting forth briefly

some of the difficulties and my endeavors to overcome them; next, the part I have taken in the closely related matters of immigration and the conservation and development of natural resources; then transportation matters; next, other matters, with a view to showing the constructive and progressive character of my administration generally; and, finally, the specifications of the complaint.

PUBLIC LANDS.

Public lands and land laws in Hawaii cannot be thought of in ways familiar on the mainland. The administration of these lands and laws teems with difficulties. Homesteading, although the most important, is only one of the problems.

The total area is small, and so much of that is at so high an altitude, or of such a broken character, or of such recent formation, or so arid, or so necessary as forest reserves for conserving water, that very little of it is available for agricultural purposes, and the successful utilization of this requires large expenditure and intense scientific application. The soils are heavy and require deep plowing—from one to two and a half feet. Often the surface must first be cleared of jungle or rocks, or can be made productive only by an outlay of a hundred or two hundred dollars per acre in irrigation works. The temperature varies from below freezing point to 90 degrees and the rainfall from 10 to 400 inches annually within short distances. Pests abound, unchecked by cold winters. Crops require long periods to mature. Distances from the world's markets limit the kinds of profitable crops. The science of tropical agriculture is comparatively young. Transportation facilities are inadequate. Road construction and maintenance is expensive, and much length of road is required for small tracts of land on account of steep grades and narrow areas between deep valleys. There are few good harbors, and railroad building is costly. The Territory is divided by ocean channels and each island by canyons and precipices. The cost of surveying is enormous because of intermingled private lands of irregular shapes and uncertain localities, as well as because

of jungles that must be traversed and a topography that requires each lot as a rule to be of special shape and size. The population is cosmopolitan with greatly varying desires and capacities. The tropics or subtropics have not yet proved preponderatingly attractive to temperate zone people. The difficulties of the small citizen-farmer on the one hand, and the inducements from the more easily successful Orientals of industrious and frugal habits or corporations of large capital on the other, tend to discourage real homesteading and invite speculation. Homesteading therefore is naturally a slow process.

The prime factor in the homestead problem in Hawaii is the smallness of the area available for that purpose. The first essential, therefore, is the conservation of the available public land for genuine homesteading. Such land should neither be put beyond availability for that purpose by the disposition of large areas for other than homestead purposes, nor be wasted by disposition in small areas to mere speculators or investors under the guise of homesteading.

Accordingly, at the outset when I took office I reversed in several important respects the policies of my immediate predecessor, who, unlike his predecessor, had little or no faith in homesteading. In the first place, I have not sold a single large tract of cane land or other developed or undeveloped country land for cash. In the second place, I have not in a single instance exchanged a large tract of country land, whether developed or undeveloped, for town land. I have acted on the theory that the lands now suitable for homestead purposes should be kept for such purposes until bona fide homesteaders apply for them, and that the lands now unsuited for such purposes might, as already indicated in some cases by past experience, become suitable for such purposes in the course of time through the advance of scientific knowledge or the discovery of means of irrigation or otherwise. In my opinion, it is better to lease than to sell the latter class of land until it is known to what use it may best be put—unless it can be exchanged for other land of approximately equal or greater area already suitable for homesteading.

During my administration I have made only three large ex-

changes and in each case the exchange has been of country land wholly or largely unsuitable for homestead purposes for country land exceptionally well adapted to such purposes. The aggregate areas conveyed were 3,521.95 acres and those received 5,992 acres. In general, the lands conveyed were arid lands for which the government had no water, but upon portions of which the grantees could get water of their own at considerable expense, while the lands received were among the very best in Hawaii for homestead purposes with sufficient rainfall so as not to require irrigation, and in one case, besides the land, a million gallons of water a day was acquired for the domestic uses of the homesteaders.

On one of these lands, 1,200 acres in area, thirty-one American homesteaders are now settling, or about to settle. When the exchange was made the plantations involved in it intimated that, if the government should make a success in homesteading this land, they would not only assist in making the homesteading of this land more successful by extending a railroad to it or nearly to it, but also extend the colony of homesteaders by homesteading some of their own private adjoining lands. They are now subdividing for this purpose about 1,000 acres of such adjoining lands and extending their railroad as above stated at a cost of \$200,000. They are also endeavoring to arrange for the erection of a large pineapple cannery by others and for favorable contracts for the purchase of pineapples by the cannery from the homesteaders.

In another of these cases, the plantation, before my administration began, surrendered a portion of a leased tract of government land for the purpose of enabling the government to homestead it. During my administration not only has the homesteading of that land been continued but, in order to extend the colony, 1,777 acres of additional land has been acquired from the plantation by exchange, together with the million gallons of water a day above referred to, and now about 135 of the homestead lots have been disposed of. The plantation and those interested in it have financed the homesteaders, erected a factory for canning their pineapples, installed water works (now taken over by the county), and extended their railway to the homesteads. The

homesteaders in this case are mostly Portuguese and Spaniards but include a number of Hawaiians and others.

The practice was begun before my administration of inserting clauses in leases of agricultural and pastoral lands permitting the withdrawal of such lands at any time for homestead or public purposes, and several years ago the insertion of such clauses in leases of agricultural land was made obligatory by an amendment of the Organic Act drafted and recommended by me. This practice has been continued as a matter of policy in leases of pastoral lands also and lately the scope of the withdrawal clause has been extended, especially in the case of such lands, that is, lands upon which the lessees are unlikely to expend much in improvements.

My chief task, however, was to devise appropriate methods of checking an appalling abuse of the homestead laws by dummies and speculators and so conserve the land for real homesteading.

There are several methods of homesteading under the homestead law, which was borrowed in part from the New Zealand laws: (1) The homestead lease. This is a lease for 999 years; it must be resided on and improved to a certain extent; it descends as prescribed by the homestead law, but cannot be alienated; no price is charged for the land but a nominal fee must be paid; the lots are of small areas. Under this method, therefore, a person is given free a small home so long as he and his descendants live on it and cultivate it. This method is intended mainly for Hawaiians with a view to giving them an area sufficient to support a family, practically without cost, and to prevent their disposing of it, as some of them are prone to do, for ready cash. It is well adapted to its purpose and the Hawaiians are the ones who chiefly have taken advantage of it. (2) The right of purchase lease. This is a lease for twenty-one years at a rental of eight per cent of the purchase price, with the privilege of purchasing at any time after three years but within the twenty-one years, provided the homesteader has resided on the land two years and cultivated twenty-five per cent of it and with the obligation, in case the purchase is not made within five years, to reside on the land from the end of the first year to the end of the

fifth year and cultivate five per cent before the end of the third year and ten per cent at the end of the fifth year and perform certain minor conditions as to tree planting and fencing. (3) The cash freehold agreement. This is much like the right of purchase lease except that the land is sold at auction and payments must be one-fourth down and one-fourth in one, two and three years, respectively, and the conditions of residence and cultivation must be performed within three years. (4) The settlement association. Six or more persons may take up adjoining lots under either the right of purchase lease or the cash freehold agreement. The right to take the lots is confined to the members of the association, the object being to allow groups, especially persons acquainted with each other coming from the mainland, to form a congenial neighborhood. (5) The special homestead agreement, the terms of which are largely discretionary with the administrative officers.

As a rule the applicants have been given their choice of these methods and the method usually selected by dummies and speculators has been that of the settlement association; and, of the two methods available under that, the right of purchase lease has usually been chosen.

For instance, to state hypothetically and typically only what has actually happened in one case or another, some enterprising person might get up such an association, perhaps charging the others an admission fee. The members might be professional men, business men, office holders, mechanics and others of various nationalities who know little or nothing of farming and do not propose to farm, and among whom there might be no social ties. They would apply for a tract of sugar cane land cultivated by a plantation, and generally for the largest areas permitted by the statute and were often allotted areas, if not as large as that, at least several times larger than they could cultivate or finance even if they tried to do so. The land would be opened and the members of the association would select their lots under the right of purchase lease method, all other persons being precluded by law; or, if perchance the government should offer the lots at auction under the cash freehold method, the plantation manager,

preferring friendly to hostile speculators, might attend the auction sale with a number of his employees—book-keepers, carpenters, blacksmiths, common laborers—and indicate to them by nods how high they should bid. Next, the manager in collusion, either voluntarily or involuntarily, according to which group obtained the lots, might erect a ten by twelve shack on one corner of each lot, to which the taker of the lot would go, perhaps miles, a number of nights each week to sleep there for exactly two years, the period prescribed by law for residence, meanwhile keeping his former home in the town or his room in a plantation lodging house, and taking his meals there as previously, all the while continuing his former occupation. A contract might at the same time be entered into by which the taker of the land, styling himself a homesteader, would agree to cultivate it in sugar cane and sell it to the plantation in consideration of the plantation making certain advances, but with a provision that in case he should be unable to bring the crop to maturity the plantation might enter and carry it to maturity, keeping an account of the cost and deducting that from the proceeds and paying the surplus to the homesteader, but at the same time the homesteader might hand a letter to the plantation manager stating that he was then, that is, before beginning, unable to carry out the contract, and asking the plantation manager to take possession at once and plant and cultivate the land. By a further collateral arrangement the manager and the homesteader might agree that the surplus to be paid over to the homesteader when the crop should be harvested should be deemed to be exactly five dollars per acre per annum for the land, irrespective of the time required for the maturity of the crop and whether any crop was harvested or not. Complicated accounts might then be kept by the plantation book-keeper to exhibit to the Land Commissioner when the applicants should finally apply for their patents. If a homesteader were an alien he might take out his first papers and obtain his patent for the land before taking out his final papers of citizenship and boast that he never intended to take out his final papers. The homesteaders might repeat this operation of acquiring homesteads every three years, as was done in some cases four or five

times in succession. The land also was usually sold under the right of purchase lease at about one-fourth or one-third of its real value, so that during the three years of probation preparatory to receiving a patent the homesteader might receive practically in rents from the plantation more than the entire cost of the land and house without turning a spade full of sod himself and have the land besides to sell to the plantation or an alien Oriental or to lease it and live on the rents the rest of his life. Or, if necessary, the plantation might pay the purchase price for the homesteader when the time came for him to apply for a patent, and take a mortgage or deed of the lot. Thus, the best land for homestead purposes, for it was that class of land that invited speculation, was gradually being transferred from the government to corporations or alien Orientals through the medium of dummies or speculators who were practically given the entire price of the land as their commission for effecting the transfers. Obviously, it would be better for the government even to sell the land directly to the plantations for its full value and better still to lease it to the plantations for a fair rental and so keep the land until it could be successfully homesteaded.

Accordingly, I decided to permit no more lands to be homesteaded under the settlement association method until the passage of the amendments to the Organic Act, hereinafter referred to, removing to some extent the opportunities for abusing that method. That method was resorted to merely to secure a monopoly of the lots and not because of any desire to establish a congenial community, for which purpose alone it was intended. I also developed the special homestead agreement method as far as I could under the law, and generally permitted the highly developed lands to be homesteaded only under that method until the passage of such amendments. Those were naturally the lands that attracted the speculators. The law was so loose in regard to the right of purchase lease and cash freehold methods that speculators found little difficulty in evading the spirit of the law. In developing the special homestead agreement, the main idea was to perscribe what a bona fide homesteader would wish to do anyway, but what would not prove attractive to a fake home-

steader. The terms of payment were made easier and the terms as to residence, cultivation and transfer more stringent. For instance, I allowed the land to be paid for in ten annual payments without interest, but required that residence should continue at least five years instead of two years, and that it should be genuine but permitted it to be in periods of not less than six months of continuous residence at a time; and did not require it to begin before the end of the third year, in order to enable the homesteader, if necessary, to support himself in some other way until he could get his homestead on a paying basis, in view of the great expense of starting a homestead in Hawaii and the length of time required to get the first crop. I provided also strictly against transfers before a patent was obtained, except by consent of the Land Commissioner, and required that the purchaser should cultivate and maintain under cultivation not merely five per cent at the end of the third year, even if only for a week, or ten per cent at the end of the fifth year, as under the right of purchase lease, but various percentages according to circumstances, as, for instance, ten, twenty, thirty, forty and fifty per cent continuously from the end of the second, third, fourth, fifth and sixth year, respectively, until the homesteader should become entitled to a patent, and, though not in these words, that this should be done by him or under his direction and not by some one else, and permitted him to obtain a patent at any time after five years upon payment of the purchase price, provided he maintained his home on the land for at least five years and had cultivated the maximum per cent for at least four years. I also reduced the size of the lots. But all this was not sufficient. Amendments of the law itself by Congress were necessary in order to secure adequate results.

Accordingly, in order to get the benefit of the well-considered advice of others interested in this matter and at the same time to bring the matter more effectively before the public, I appointed a commission of seven persons who were sympathetic with the homesteading idea and representative of the various elements of the community to investigate the subject and report. This commission in general supported my views both as to the course al-

ready pursued and as to the amendments needed in the land laws. Its printed report, dated November 9, 1908, is transmitted herewith (Exhibit K).

I then drafted the proposed amendments to the Organic Act and argued them before the Committees of the Senate and House in Washington in December, 1908. They were not enacted at that session. They were then much discussed in Hawaii and, before the next session of Congress, after calling in a number of political leaders and going over the amendments most carefully with them in a number of conferences, I called a special session of the Legislature solely for the purpose of obtaining an expression of its views on this subject, and it unanimously,—republicans, democrats and home rulers alike,—two members being absent from each branch at the time, recommended to Congress the passage of the amendments. I then went to Washington and argued these again before the Committee of the Senate and House, and they were enacted toward the end of the session and became law May 27, 1910.

Their more important features are the following: In the first place, homesteads are hereafter to be given out by drawings instead of, as previously, by auction sale or by standing in line. This is partly to prevent excessive prices through auction sales and hardships through standing in line, and partly to facilitate the homesteading of persons from the mainland by enabling them to know more definitely what they can expect before coming so great a distance. In the second place, additional restrictions are imposed both as to who may take homesteads and as to their powers of alienation, whether before or after a patent is obtained. Not only is an alien forbidden to take a homestead unless he has declared his intention to become a citizen, but he is required to complete his citizenship before he can obtain a patent. The taking of a homestead is forbidden to a person who or whose husband or wife shall have previously taken a homestead or who at the time owns other land in the Territory the combined area of which and the land in question exceeds eighty acres. In other words, the amendments prevent "repeating" and they prevent the

land from being taken as homesteads by aliens or by persons who already have sufficient for a homestead. Further, after a homestead has been taken, neither the land nor any interest therein or control thereof can, except in certain cases, at any time, whether before or after a patent is obtained, be in any way transferred to or held by or for the benefit of any alien or any corporation or any person who owns or controls, directly or indirectly, other land, the combined area of which and the land in question exceeds eighty acres. Thus the land is kept perpetually from going to aliens or to corporations or to persons who already have enough land.

In my opinion, there should be successful homesteading or none at all. The homestead requirements should be such as will encourage the taking of public lands as fast as they can be successfully homesteaded and no faster, and they should be such as will operate automatically in this way. The speculators and a certain class of politicians may raise the cry that the small man has no chance, but I have confidence that the voters at large want honesty in this as in other matters and can be depended on to support what is for the real permanent welfare of the Territory. The question is not one merely between the large man and the small man, but far more one between the bona fide homesteader and the fake homesteader and between the public interests and individual interests.

There are other important amendments which need not be set forth here.

The complainant states (Complaint, p. 11) that there are about 34,000 acres of public land under cane cultivation, either under lease or held at will, and that most of it may be withdrawn from the occupants and hence is now available for homestead purposes, but that during the more than four years of my administration, not one acre of that land has been applied to homestead purposes. The facts are that according to the returns of last month, there are now under cane cultivation 36,613.11 acres of public land, but that only 12,180.31 acres are at present available for homesteading, and that during the four years and a half of

my administration 5,238.08 acres of such land, or nearly one-third of all that has been available, have been withdrawn for homestead purposes, the greater part of which has already been opened, and the remainder, of which has been surveyed and is about to be opened. Many homesteaders are now upon such lands already opened. Of course, larger areas of other lands have been opened for homesteads.

During the four and a half years of my administration, notwithstanding the limitations that have been imposed for the prevention of fake homesteading, 940 homesteads have been taken as compared with 931 taken during the preceding seven years of Territorial government. The average number taken per annum during my administration has been fifty-seven per cent greater than the average number previously, and presumably the percentage of increase in genuine homesteaders is greater still.

Since the amendments of a year and a half ago, about 1,500 homesteads have been opened and nearly 300 more have been surveyed and are about to be opened. There are now open and ready to be taken immediately upon application, more than a thousand homesteads, some of which are on cane lands and others on other lands.

The public land question, which had long been one of the most disturbing political issues was practically eliminated from the last election campaign in consequence of these amendments.

Proper homestead laws and their proper administration are not, however, the only essentials to successful homesteading. There is the matter of transportation facilities, which will be considered under another heading. There is also the important matter of financial aid in view of the large amount of capital required to cultivate and the length of time required for crops. A partial solution of this problem is one of the incidental results of the amendment to the land laws. The plantations, finding that they can no longer collude, whether willingly or unwillingly, with fake homesteaders and acquire homesteaded lands from them by purchase or lease or other means, are now arranging to make ad-

vances to the homesteaders. In other words, while the form of the planting contract may be similar to what it was formerly, the plantation now really makes advances to the homesteader and the homesteader does the farming instead of the plantation doing it and keeping farcial accounts with the homesteader on its books. In each case, under the amendments of the Organic Act, the homesteader gives a mortgage on the crop, not on the land, for the advances made by the plantation, and this is approved by the Land Commissioner and Governor. This approval is usually given for only one crop at a time, if the advances are for the crop alone, and for one plant crop and one ratoon crop if the advances are for the homesteader's house also, and upon condition that if the plantation is obliged to enter and carry the crop to maturity because of the default of the homesteader, the time covered thereby shall not be included as part of the time required for residence and cultivation by the homesteader to obtain a patent. I have from the first advocated advances by banks and others to homesteaders, and during my administration, not, of course, as a result of my efforts, new banks or branch banks have been established in a number of places throughout the Territory, and these are to an increasing extent making loans to small producers.

One group of needs in connection with homesteading is of such comprehensive and important nature that I will consider it under a separate heading as follows:

IMMIGRATION AND CONSERVATION AND DEVELOPMENT OF NATURAL RESOURCES.

Early in my administration, many needs became obviously and pressingly urgent for the proper development of the Territory along American lines. There was on the one hand the need of immigration of desirable citizen-making material, both for settlement and labor, and on the other hand, the scientific development of the natural resources of the Territory. Accordingly, shortly before the first legislature in my administration, I announced a proposition, which I had for some time previously dis-

cussed with a number of others, to impose for these purposes a special income tax of two per cent on incomes in excess of \$4,000, there being then already a general income tax of two per cent on incomes in excess of \$1,000, shortly afterward changed to \$1,500. This tax would fall principally upon those best able to bear it—especially the sugar corporations. The tax was expected to yield about \$400,000 annually, three-fourths of which was to be used for assisting immigration, and one-fourth for the conservation and development of natural resources. I recommended this in my message to that legislature, and after lengthy and careful discussion the legislature enacted the bill. A proposition was made to insert a plank in the republican platform at the election following to divert the one-fourth of this tax from the conservation and development of natural resources to other purposes, but this was strenuously resisted by me on the ground among others, that it would be to the detriment of the “small man,” and the proposition was abandoned.

With the proceeds of this tax there have been introduced into the Territory more than 6,000 persons, largely women and children, who or whose descendants should make good citizens. These immigrants are mainly selected Portuguese, Spanish and Russians. During the second legislature of my administration, a bill, drafted in part by me and recommended by me in my message, was enacted, raising the Bureau of Immigration to a department and greatly enlarging its powers, especially with reference to the satisfactory settlement of immigrants after their arrival. Previously, the functions of the bureau had practically ceased after the arrival of the immigrants in the Territory. A large and well appointed immigration station has been constructed, and the immigration work placed largely in the charge of an expert, formerly of the Federal Bureau of Labor, and immigrants are looked after long after their arrival with a view to settling them on public or private lands, where that can be done, and seeing that they are properly treated if they remain as employees. The department is specially authorized to act as an intermediary for the homesteading of private lands.

Again, one of the greatest difficulties with which the homesteader has to deal is the marketing of his produce. I had hoped, as I stated in my message to the first legislature of my administration, that this difficulty could be met in part out of the one-fourth of the special income tax known as the "conservation fund." That fund, however, proving insufficient for that in addition to other matters, it was provided in the immigration act just referred to, and also in a separate act during the last legislature, that that need should be met out of the three-fourths of the special income tax known as the "immigration fund," and accordingly the department of immigration has opened a marketing bureau, the functions of which are to bring producers and dealers into closer touch with each other, acquaint small producers with the state of the market, what, when and how much should be produced, furnish them proper seed at cost, instruct them how to cultivate, grade, pack and ship, and arrange for satisfactory transportation and sell their produce when it is consigned to the bureau. Before the passage of the last act I had appointed a commission, under a legislative resolution, to consider and report on the matter of fruit growing and truck farming.

The conservation fund is devoted to several purposes. The larger portion of it is expended under the direction of the Board of Agriculture and Forestry, through its three divisions of forestry, animal industry and entomology, all of which are doing much work of the greatest importance. During my administration, the forest reserves have been greatly extended and tree planting greatly encouraged. The work of the bureau of animal industry has been extended throughout the Territory and, among other things, glanders has been practically eradicated from horses and tuberculosis from dairy cows. Scarcely any work is of greater importance to the small farmer in Hawaii than that of the entomologists. There is constant danger of the introduction of plant pests from other countries and such pests flourish in these islands, where there are no cold winters.

Another portion of the conservation fund is devoted to

scientific investigation for the benefit of the minor agricultural industries. (The principal industry, sugar, is sufficiently provided for in this respect by the planters' experiment station.) For this purpose \$10,000 annually is contributed to aid the Federal experiment station in Hawaii, which has done and is doing much for the development of the rice, pineapple, rubber, tobacco, cotton and other minor industries, and now, largely at my special request, a part of the allotment to that station is being used for the establishment and maintenance of experimentation and demonstration farms in homestead centers on the various islands, of which farms a number have been put in operation during the last year.

Another portion of the conservation fund has been used for the establishment, partly in consequence of my active interest in the matter, by the College of Agriculture and Mechanic Arts, of a dairy, poultry, and swine experiment station.

Still another portion of this fund is being used for a topographic and hydrographic survey of the Territory, a matter of the greatest importance for purposes of future development. This also is a subject in which I have taken special interest. The work is conducted in coöperation with the United States Geological Survey, which contributes a portion of the expense. Formerly, it was not permitted to do this, under a decision of the controller of the treasury, and therefore I inserted in the draft of the amendments of the Organic Act above referred to a provision permitting this to be done and argued it before the Committees of Congress, and the provision was enacted.

The allotment of the conservation fund to these several objects is made, subject to my approval, by a committee of three persons appointed by me with the consent of the Senate.

In many other matters I have kept the welfare of homesteaders constantly in mind, and have always supported propositions looking to their success. For instance, I supported a movement for a pipe line something over twenty miles in length to supply water for domestic and stock purposes for a large district of small farms, and had much to do in devising a feasible method

of financing the scheme. That pipe line has now been constructed. This is the first time that anything of that sort has been done in the Territory. In other cases, as, for instance, in granting water licenses or rights of water for irrigation ditches, reservations have been made of water for homesteads. In one case, the only case thus far in the Territory, a water users' association was formed by homesteaders with the assistance of the administration and certain public springs turned over to them for their use.

TRANSPORTATION FACILITIES.

The principal complaint next to that in connection with the public lands relates to transportation facilities.

The chief need in such facilities between Hawaii and other countries has been an increase in steamer accommodations for passengers and perishable goods, a need which I have endeavored, but without success, to have met by Congressional action, although I may add that the need is not likely to be so great hereafter as it has been hitherto. A bill for the relief of passengers was passed by the House of Representatives and reported favorably by the Senate Committee after I had argued the matter before it.

Transportation between the islands is conducted chiefly by the Inter-Island Steam Navigation Company. Perhaps the best way for regulating this would be through a public utilities commission, but bills introduced in the legislature, not, however, at my instance, for that purpose have thus far failed of passage. I understand that it is against the policy of Congress to include steamship companies of this kind under the Interstate Commerce Law, but when a move to secure that was made some time ago the complainant cabled to the business organizations in Honolulu for advice and was advised not to proceed, which advice apparently he followed. I hope that the marketing bureau of the Department of Immigration, above referred to, with the establishment of which I have had much to do, will succeed in obviating

some of the difficulties hitherto said to be experienced by small shippers. Another partial remedy is the construction of a good harbor on each island so that shipments may be made direct to other countries without transportation to Honolulu and transshipment there.

For the development of such harbors I have been a constant advocate and the Federal Government has already done much work in that direction on the three largest islands, and a survey has been completed and a recommendation made for similar work on a harbor on the remaining large island. In one of these cases in which the shore of the harbor was private property I had much to do towards securing its transfer so that it should be public property.

Next in order is the construction of suitable wharves at these and other harbors. Of course, at the principal shipping points there should be public wharves, and I have worked with others successfully with this end in view. A number of important wharves have been constructed during my administration and large appropriations have now been made for the construction of others. As to private landings, more than two years ago I appointed a commission, in pursuance of a resolution of the legislature, to examine and report upon all private landings and wharves. This commission visited nearly all the private landings and wharves in the Territory and submitted a lengthy report which has been printed. It recommended that the government take certain steps, which it has since done in two cases to make these wharves public.

Perhaps the most important of all transportation needs is the construction of railroads for the transportation of produce to the principal harbors developed as above stated. Wagon road construction is costly, and hauling produce over them the requisite distances and grades to suitable landings often is almost prohibitive. There has been an unusual amount of railroad construction during my administration. The complainant implies (Complaint, pp. 8, 43-44) that my sympathies must be mainly with the large interests because of my connection with large interests through

my father-in-law, who is the largest owner of the two principal railroads in the Territory, and would seem to imply that these railroads occupy the same position in public opinion here that some of the railroads occupy in the minds of a large portion of the public on the mainland. The fact is that these railroads have done more than anything else to develop the Territory in the interests of both large and small producers and have been so conducted that there has been no noticeable complaint against them. These roads were constructed at great cost and in the face of great difficulties. An extension, thirty-four miles in length, of one of them now being constructed at an expense of \$100,000 a mile, and yet the passenger and freight rates are moderate in comparison with those on the mainland, all things considered. These railroads also are under the Interstate Commerce Law. So important are railroad transportation facilities in Hawaii that I have even advocated, somewhat against my natural views, an extension to Hawaii of the Act permitting under proper safeguards a guarantee by the Philippine government of the interest on railroad bonds for a limited period.

Next come the main government roads, called belt roads, around the principal islands. I recommended to the last legislature that these be provided for out of loan funds, and appropriations were made out of such funds to the amount of \$1,270,000 for this purpose, and I devised a financial scheme for meeting the interest and sinking fund on the bonds and insuring an efficient expenditure of the money.

Next comes the lateral roads, including the homestead roads. Two years before my administration began an act was passed permitting the use of one-half of the proceeds of any tract of land opened for homestead purposes to be used in the construction of roads for that tract, but almost no money was devoted to that purpose under the law before I took office. I recommended to the first legislature during my administration that the law be amended by providing that the entire proceeds, instead of half, might be used for such purposes and by providing that such proceeds need not be used on the particular tract from which they were derived,

thus permitting the surplus from one tract to be used on another tract, and permitting the roads to be constructed before sufficient money would come in from the particular tract in question, and these recommendations were adopted by the legislature. At the last legislature I recommended that the act be further amended so as to permit interest on deferred payments and rents under right of purchase leases to be used for this purpose in addition to the proceeds of sales. Under these amendments considerable sums have been applied to the construction of home-stead roads.

There is only one street railway in the Territory, namely, in Honolulu. A little more than one-third of the thirty years of its franchise has expired. At the last session of the legislature a bill was passed granting an extension of twenty years and changing the franchise in other respects. Perhaps the hardest thing I had to do during that session was to pocket-veto that bill. It came to me too late to be vetoed satisfactorily in the usual manner. The company by reason of its good public service was entitled to much consideration. From its standpoint the changes in the franchise would enable it to give better service and build extensions for which there is considerable need. On its face the bill appeared fair, but a careful analysis of it and the original franchise showed clearly, as it seemed to me, that it was not in the public interests. The legislature also passed a bill granting, subject, of course, to the approval of Congress, a franchise for a street railway at Hilo. Many amendments were made in this on my suggestions in the public interests, and since then I have insisted that the grantee consent to further amendments in the same direction by Congress as a condition of obtaining a license to use certain water for generating power for operating the railway.

OTHER POLICIES.

It has been the endeavor of my administration to study every branch of the public service and work out so far as practicable

the most economical, efficient and advanced solution of the problems involved. The limits of this reply forbid reference to many matters of lesser importance or more than brief reference to matters of larger importance.

A few matters will be touched on here, some of which bear directly or indirectly on those above referred to and all of which are of great importance to the welfare of the Territory.

Much attention has been given to finances. This matter has become of superlative importance, especially in view of the establishment of local governments a few years ago. The old tax system remained. The Territory collected all the taxes at a rate prescribed by law and paid certain percentages of the taxes and certain other revenues over to the counties. The Territory and all the counties drew from a common money bag with the natural result that there was a lack of responsibility and a tendency to waste. I devised a scheme and submitted it to the last legislature, separating the sources of income of the Territory and the counties, and providing at the same time an elastic tax rate within certain maximum limits, thereby putting the Territory and each county on its own independent basis and creating a clear relation between the pockets of the tax payers and the expenditures of the public officers. The recommendation was enacted by the legislature. It revolutionized the tax system in the interests of economy and the sound development of local government. Other measures recommended by me have been adopted by the legislature, regulating the expenditure of public moneys, preventing anticipation of revenues by counties, prohibiting public officers who have had to do with the making of public contracts from being or becoming interested in them, requiring frequent publication of local government accounts, amending the laws in regard to sinking funds and refunds of public bonds, providing for many important public improvements both by the Territory and by the counties, with special provisions to secure economical expenditure of the funds, providing for deposits of public moneys at interest in the banks, thereby securing revenue and preventing financial disturbance through the withdrawal of large sums from

circulation, besides many other laws relating to public finances. As previously stated, a law for an additional income tax for immigration and conservation purposes has been enacted. The Honolulu water and sewer works have been put on a self-supporting basis. The appropriation bills have been remodeled with the result that they require only a small fraction of the time formerly required of the legislature.

Owing to a large increase in the number of children without a corresponding increase in the revenues, the public school system had become in great need of increased funds. I recommended such increase to the first legislature of my administration, but there was not sufficient money to meet it and a resolution was passed for the appointment of a commission to study the matter and report to me before the next legislature. I appointed a sympathetic commission which prepared an elaborate report and recommended a bill which was enacted at the next legislature. It was partly for the purpose of making this effective that I devised the new system of taxation above referred to. The new system is practically automatic, an elastic tax being imposed to meet the estimated needs within certain limits based on the number of pupils.

Closely connected with the subject of schools is that of the College of Hawaii, otherwise known as the College of Agriculture and Mechanic Arts. Provision was made by law for its establishment before I took office, but no adequate means for its maintenance. I succeeded, with great difficulty, in obtaining a ruling, reversing two former Federal Department rulings, that this institution was entitled to share in the allotments of the Federal Government to colleges of this character, and have had much to do with obtaining, through purchase and law suits, the desired site for the college, and recommended the appropriation for its permanent building, which is now being constructed.

A law for a Territorial library, enacted before my administration, having proved ineffective, a substitute recommended by me was enacted, and personally I obtained by private gift \$100,000 towards the construction of the building. I also had much

to do in effecting an agreement with two other libraries having about 20,000 volumes and a considerable endowment by which they are to devote their books and endowment to the use of the Territorial library. I have also provided a site for this library, the building of which is now approaching completion.

No subject has called for more vigorous and progressive action than that of the public health, which is of special importance in view of the character of the population, local physical conditions, the situation of Hawaii in the line of travel between the Orient and Mexican and Central and South American ports, and the presence here of large military and naval forces. The subject of leprosy has been for nearly half a century one of the most expensive and difficult and delicate to handle. A new policy on this subject was worked out early during my administration and embodied in an act drafted by me and enacted by the legislature, with the result not only that this matter is being handled far more effectively than before but also that one of the most disturbing factors has been practically removed from politics. A campaign against tuberculosis has been inaugurated, and a comprehensive law passed and large appropriations made for that purpose. Mosquito and rat campaigns have been conducted to guard against yellow fever and plague. A comprehensive system of sanitation has been extended throughout the Territory; to aid in this some sugar companies have been induced to construct sanitary buildings and villages for their employees and many of them to pay inspectors appointed and directed by the Board of Health for sanitary inspection on the plantations. The pure food laws have been greatly strengthened and extended. Provision has been made for reclaiming large areas of low lands in the principal towns. The entire work of the Board of Health has been reorganized and made more effective.

The juvenile courts have been greatly developed. Indeterminate sentences have been provided for. A law has been enacted permitting writs of error on the part of the prosecution in criminal cases at certain stages of the proceedings. Financial

arrangements have been made for new buildings for the boys' and girls' industrial schools and for a new Territorial prison.

Provision has been made resulting in the effective enforcement of what has been declared the best high license liquor law anywhere in force.

Permanent registration for elections has been provided for and I have advocated the enactment of a direct primary law to both legislatures during my administration.

REPLIES TO SPECIFICATIONS

I. KAUNAMANO HOMESTEADS.

(Complaint, pp. 12-16)

The charges under this head relate to the attitude of the Territorial Government toward the Thompson Settlement Association. Those covered by the first four paragraphs (Complaint, pp. 12-14) relate solely to the two years (July, 1905-July, 1907) of negotiations with this Association under the administration of my predecessor, Governor Carter, and therefore do not call for a reply or comment from me. The homesteads had been surveyed and advertised for opening before I assumed office (August 15, 1907) and were taken by the members of this Association about three weeks later (September 7, 1907).

The remaining charges, covered by the last three paragraphs (Complaint, pp. 14-16), relate solely to the action of my administration on the applications, received April 10, 1911, of nine of the twelve members of this Association for patents. The other three members have not yet applied for patents.

The charges that relate to me are in substance that, although the homesteaders have complied with all legal requirements to entitle them to patents and although I have frequently been pressed for an answer and repeatedly been challenged to bring legal proceedings to vacate the entries and been urged to issue the patents, I have made no answer.

So far as I recollect, I have never been pressed for an answer or challenged to bring legal proceedings or urged to issue the patents. The natural course would be for the members of the Association, if they cannot otherwise get satisfaction, to bring proceedings to compel the issuance of the patents, and the land act provides a simple, speedy and inexpensive method of doing

this, and the members of this Association have in other cases not appeared to lack either the means or the disposition to go to court.

However, not only has the administration acted expeditiously in this matter, but the members of the Association have been kept informed of the status all along and have been treated, if anything, with undue consideration in view of the circumstances. This is the "cause célébré" in what is widely believed to be fake homesteading in this Territory,—not that it is the worst case, but that it is by far the most notorious.

The facts are as follows: Before obtaining the lots in question, which are on the land of Kaunamano in the District of Kau on the Island of Hawaii, the members of the Association endeavored to get 100 acres apiece, claiming, as shown by the correspondence in the land office, that they all understood farming, that each could handle that area, that they were sincere in their intention to cultivate the land thoroughly and intended to carry out all the conditions of residence and cultivation and much more. They were given on an average an area of 48.64 acres each, at one-fourth or less of its cash value, under so-called "right of purchase leases," which was the one of the four forms of homestead agreements which they desired. This land was all highly-developed sugar cane land in the heart of the Hutchinson Sugar Plantation. Let us see what they did.

Soon after they obtained the lots they submitted, through their attorney, Mr. C. W. Ashford, to the Land Commissioner for approval an agreement with the plantation, under the guise of a planting contract, for three calendar years, which was the minimum period allowed by law for obtaining a patent under this form of homesteading. Under this agreement the plantation was to erect a house for the homesteader to cost not more than \$300 upon a portion of the lot not to exceed one acre, the homesteader to give a mortgage to the plantation for the cost, but the plantation to take over the house for the amount of the mortgage at the end of the three years if the homesteader did not desire to remain longer on the lot. The plantation, not the homesteader, was to cultivate in sugar cane all the rest of the land and divide

equally with the homesteader, but with a proviso that the homesteader's share should be at the rate of not more than \$8.00 per acre per annum and also that it should be not less than that amount. In other words, the agreement was in effect a lease to the plantation at \$8.00 per acre per annum of all the land except the acre upon which the homesteader was to live during the period of probation, and contained an implication, supported by other facts, that when the patents were obtained the lots would be sold or leased to the plantation. The law forbade the assignment by a homesteader of his interest or any part thereof under a right of purchase lease without the consent of the Land Commissioner, and the latter's consent to this agreement was sought apparently because it was feared that the agreement might otherwise be construed as such an assignment. The Commissioner, of course, with my approval, refused to approve a proposition so obviously violative of the spirit of the homestead laws. A copy of this agreement is inclosed herewith, marked "Exhibit A."

Thereupon a different agreement (Exhibit B) was devised which was executed without submission for the approval of the Land Commissioner and which presumably was supposed to be in technical compliance with the law or a successful evasion of its spirit. It was for the same three calendar years. It did not cover the construction of the house, but the entire rent for the first year was to be paid in advance, and there was no provision that the plantation should do the cultivating as well as no provision that the homesteader should do it, but there was a provision that if the homesteader failed to do the cultivating the plantation should not be entitled to deduct the cost of the cultivating from the homesteader's share of the crop, and by a collateral agreement of the same date it was agreed that in case the homesteader should fail to do the cultivating the plantation could enter upon the land and do it, with a clause that if the homestead should be forfeited during the period of the agreement the agreement should terminate. The agreement purported to be one for the sale of the crop each calendar year, and the price at which it was to be sold was in the case of each lot exactly \$8.00 per acre per annum. In

other words, this agreement also, in the guise of a planting contract, was in effect, whether in law or not, a lease of the land at \$8.00 per acre per annum. The rental was payable in advance for the first year and semi-annually in advance for the other two years. It was immaterial whether any crop was harvested during the year because it takes from a year and a half to two years for a crop to mature on that land. In one case, for instance, when the crop was harvested near the end of the second year the land was allowed to go practically to weeds and grass during the third year because the plantation could not obtain another crop before the end of the third year; the rent, called the price of the crop, had to be paid, however. In fact the land was cultivated by the plantation. In general a small garden was cultivated by the homesteader on the acre house lot, and in a few cases some sugar cane was cultivated shortly before the end of the three years, by running a cultivator through the rows of cane then standing on the land so as to comply technically with the homestead conditions, but in most cases, even after the expiration of the three years, only just enough of the land to obtain a patent, namely, 25 per cent of the area, was cultivated, and that in some cases without fertilizer and in most cases very poorly, apparently merely for the purpose of complying technically with the law in order to obtain a patent, the law requiring that at least 5 per cent should be cultivated at the end of the third year and 10 per cent at the end of the fifth year, but with a proviso that a patent may be obtained at any time after three years and within twenty-one years upon cultivation of 25 per cent and the fulfillment of certain other conditions. A collateral agreement threw additional light of the same character on the real purposes of these ostensible homesteaders (Exhibit C). These and many other facts, such as the character of their residence on the lots, the maintenance of their principal homes elsewhere in some cases, and so forth, seemed to call at least for an investigation before the applications for patents should be passed upon.

Accordingly, four weeks after the receipt of the applications, they were referred to the Attorney General, and a week

later the latter sent one of his deputies to the homesteads to make a thorough investigation. The deputy submitted a lengthy report on May 31, 1911. The results were such that he was then directed to investigate similarly three groups of homesteads on the other side of the same island where the circumstances were equally or more suspicious, and he reported in that matter on June 28, 1911, showing an astounding abuse of the homestead laws.

There was so much similarity in these several cases that it was deemed best to consider them together. I personally examined the reports, analyzed and generalized them, and in an interview published in the "Advertiser," July 30, 1911, set forth at some length the facts as well as the lessons to be drawn from them in regard to methods of homesteading generally, and I call your special attention to that interview (Exhibit G), not only for further facts in these cases but for my attitude toward homesteading and a recent expression of some of my views as to methods of successful homesteading.

This interview attracted considerable attention and the homesteaders must have read it and thus, as well as in other ways, have known the attitude of the administration toward their applications for patents. Indeed, the Association, by its attorney, Mr. Ashford, published a lengthy defense in the same paper two days later. About the same time, if I remember correctly, perhaps a little earlier, I made an appointment with Senator G. C. Hewitt, one of the leading members of the Association, for the purpose of explaining the attitude of the government in this matter, but he did not appear at the appointed time and place. Not hearing further from him or other members of the Association, I wrote to him on August 21, 1911, referring to the fact that he had not appeared at the appointed time and explaining the attitude of the government, namely, that the administration proposed to have the legal questions in dispute settled in a few test cases, and that if the courts should decide against the homesteaders the government would then consider whether, under the provisions of the statute, it should give them further oppor-

tunity to make good. I stated also that it might be deemed best to have the tests made first in the cases arising on the other side of the island, in which case it might prove to be unnecessary to have any cases on their side. No reply was received. The Land Commissioner had previously, July 20, 1911, sent notice to several of the homesteaders on the other side declining to issue patents to them and stating that if they wished to have the questions settled by the court, the administration would do all it could to facilitate the cases and render them as inexpensive as possible. Later, on the representation of their attorney that it would be more economical for them if the Land Commissioner should institute the proceedings, the Commissioner did so. Those cases have been tried and submitted to the court, and the administration is awaiting a decision. In the trials of those cases, some unexpected facts came out in the testimony which showed even a worse abuse of the homestead laws than had been discovered previously.

Furthermore, in connection with the Thompson Settlement Association, I have recently seen a memorandum (Exhibit D) written by one of the leaders of that Association for the use of the Plantation's attorney, setting forth what the Association desired in the way of an agreement with the plantation as determined at a meeting of the Association held some months before the homesteaders received their lots and when they were emphasizing as above stated their desire in good faith to more than fulfill the homestead conditions; also two letters (Exhibits E and F) from the secretary of the Association to the plantation's attorney written before the agreement was executed, and other documents, all of which strengthen the view that at least some of the members of the Association had no intention at that time of acquiring homesteads for other than speculative or investment purposes.

It seems to be intimated, though not stated (Complaint, top of page 15) that the Land Commissioner may arbitrarily increase appraisements of homestead lots and that that was done in this

case. The law, it is true, does permit the Commissioner to alter such appraisements, but that has always been understood to mean that he may reduce them, and the practice has been to charge for homestead lots about one-fourth or one-third of their appraised value. In this instance the lots were appraised at \$50 an acre for the first-class cane land, which includes nearly all the land in the lots taken by this Association, and the appraisement was reduced to an average of \$14.00 an acre. The aggregate purchase price of all these lots was \$8,245, and the amount received by the homesteaders from the plantation in practically rents during the three years of probation, during which the land was practically leased to the plantation as above stated, was \$12,932.60; that is, \$4,687.60, or 58.3 per cent more than the cost of the lots to the homesteaders. The plantation would have been glad to pay at least \$30,000 in cash for the fee simple of those lots.

In the last paragraph (Complaint, p. 15) a charge is made that the plantation manager (who is referred to in the complaint as a German, but who is a naturalized citizen of the United States) intimated to the Association that if the homesteaders would agree to sell their lots to the plantation upon obtaining their patents, the agents of the plantation would use their influence to secure the issuance of the patents. I understand that such was the case, but that the manager did so entirely without the knowledge of the agents, who were highly indignant when they learned this, and some time later when this was learned by the Land Commissioner he called the manager to account in no uncertain terms. The manager and the Association have been at sword's points for years and each apparently has been endeavoring to outwit the other. The apparent probability that at least some of the members of the Association took the land in the first place and have held it since purely for purposes of speculation or investment and with the intention of turning it over to the plantation by sale or lease as soon as they secured their patents, is one of the principal reasons why the administration is proceeding cautiously in the matter of the applications for patents. If

the patents are refused it is not the intention of the administration to lease the land to the plantation but to endeavor to homestead it successfully under different conditions. The three groups of homesteads investigated, as above stated, on the other side of the island are on the Hakalau Plantation, which is under the same agents, namely, C. Brewer & Co., Ltd. There, the situation is different in that the plantation manager and the homesteaders have apparently acted in collusion, while, as already stated, in the case of the Thompson Settlement Association a bitter feud existed for years between the plantation manager and the leading members of the Association. On the Hakalau side at least a number of the homesteaders are practically dummies of the plantation, so that the action of the administration in those cases at least is really against the plantation rather than against the homesteaders. The administration has recently withdrawn from other plantations of the same agents for homestead purposes four valuable tracts of cane land. Neither the agents in Honolulu nor the directors in San Francisco of the Hutchinson Plantation have ever made the slightest attempt to influence my administration in any way in the matter of issuing patents in any homestead cases.

I may add that a little more than a year ago and shortly before the expiration of the agreement above referred to between the Thompson Settlement Association and the Hutchinson Plantation the members of the Association proposed to the plantation manager a new cane-planting contract, apparently genuine on its face, under which, unlike the former agreement, the homesteaders and not the plantation were to do the cultivating, they representing that they desired then to cultivate their lands, but the plantation manager proposed some amendments which the Association declined to accept, and so the matter was dropped. It has been a disputed question whether the Association wanted the plantation to accept the proposition. Learning this, and in order to give the members of the Association every opportunity to make good, if they were so disposed, I requested the agents of the plantation six or seven months ago to offer the

members of the Association as favorable a cane-planting contract as it was possible for them to give, and I offered to serve as a go-between if they so desired, with a view to assisting the homesteaders in view of the apparent impossibility of the interested parties coming to an agreement themselves on account of their hostility to each other. Later, on the suggestion of the agents, who said they had gone as far as they could, I took the matter up with the directors in San Francisco by correspondence and the directors passed a resolution authorizing the agents to do this. The agents then prepared the substance of an agreement and I submitted it to the Association. This was substantially the same as the Association itself had proposed as above stated a little more than a year ago. I stated also in my letters on this subject that the acceptance or rejection of this proposition would not prejudice the members of the Association in the matter of their applications for patents and that it was immaterial to the administration whether they made good by raising cane or in any other way. The Association, however, has informed me that it will not act on the matter in the absence of their attorney, Mr. C. W. Ashford, now in Washington.

2. WAIOHINU WATER.

(Complaint, pp. 16-17)

The complaint in substance is that the Hutchinson plantation is illegally appropriating the water of the Waiohinu springs, thereby depriving certain native Hawaiians of water, which they claim by prescription, for taro lands in the village of Waiohinu, and that the plantation has laid only a one-inch pipe from the springs to the village to supply water to the residents, and that the administration was instructed by the last legislature to take the necessary steps for a recovery of the water rights of the people of Waiohinu, but that, although it promised to do so, it apparently has not done so, and that the plantation has taken the water to the village of Naalehu, where it sells a portion of it to residents at exorbitant figures.

The facts are as follows: The land of Waiohinu, including the springs in question, has been held by the plantation under leases from the government since 1875. The present lease was made in 1889, and will expire April 11, 1914. It is expressed to be subject to "the legal rights of native tenants." The springs are at an elevation of about 2,300 feet, and from them a small stream formerly flowed to the village of Waiohinu about two miles below at an elevation of 1,075 feet. About twenty-five years ago the people of Waiohinu complained that the plantation was diverting the water, and asked the legislature for an investigation. One of these people, on behalf of himself and others, brought an action to stop the diversion and the suit was settled by the plantation agreeing to put in a pipe from the springs to the village, which it did. The pipe, I believe, has been renewed, with some financial assistance from the Territory, and is of various sizes in different parts. The water flows day and night into a large tank and there is a good head. No complaints in regard to the water supply of the village have come to me, but on a visit there last September I was informed by several of the residents that the supply was satisfactory. The people of the village themselves maintain the water works. These works, of course, are not for the supply of taro lands.

The last legislature passed a Concurrent Resolution (House Journal, 1911, p. 843) requesting the Attorney General and Commissioner of Public Lands to take the necessary steps to adjudicate the rights in question. The Attorney General replied, stating that the matter would have his immediate attention (Id., p. 936), and he did investigate the matter so far as he deemed necessary, he having been already personally familiar with it for twenty-four years, and concluded that there was nothing that the Territorial government could do at present. Incidentally, I had personally investigated the matter for other purposes three years ago. The rights claimed are purely of a private nature and therefore the government could not maintain a suit for their recovery. The appropriate course would be for the claimants themselves to bring the necessary legal proceedings. Moreover, the

government is the owner and lessor of the land of Waiohinu and all residuary rights therein and the claimants claim adversely to it and for this reason a suit by it would have to be against, not for, the claimants. Further, it is to the interests of the plantation for it to establish the prescriptive rights in question, for it is the owner of about three-fourths of the taro lands involved, and with this end in view it made an independent investigation of the matter when the legislature passed the resolution above referred to. When the lease expires about two years hence, the government will be free to act as seems best in the interest of all persons concerned.

Incidentally, it may be added that the administration about a year and a half ago opened for the use of the people of the village fifty lots of taro land which had sufficient water between the springs and the village, of which lots thirty-three were taken.

I am not informed as to what prices are charged by the plantation for water at Naalehu, but the sale of such water through the plantation's own pipes is purely a private matter, over which the government has no control. It may be added, however, that the legislature appropriated \$5,000 out of loan funds for extending the Waiohinu water works to Naalehu, and that I have allotted that amount for that purpose out of the first moneys, already received, from the bonds authorized by the act making the appropriation.

3. ALOHA AINA SETTLEMENT ASSOCIATION.

(Complaint, pp. 17-21)

The complaint is in substance that the administration, through its Land Commissioner, has manifested decided enmity toward this Association in connection with its application for about 1,300 acres of sugar cane land in Wood Valley, situated within the Pahala plantation in the District of Kau on the Island of Hawaii, and particularly in that when the Association first applied for this land about two years ago, the administration declined, at least until the passage of certain amendments to the Organic Act

then pending in Congress, to homestead it on the "settlement association" plan or any other plan except the "ten-year agreement" plan, (more properly known as the "special homestead agreement"); that the latter form of agreement is a scheme evolved by myself without authority of law; and that, when the Association again applied, after the passage of these amendments, the administration, by subdividing only a portion of the land, and that into lots of insufficient area, caused the members of the Association to conclude that the effort to obtain suitable land in Hawaii was a hopeless one.

The facts are as follows: The Association, consisting of twenty-nine, and not, as stated in the complaint, forty members, first applied for this land through its attorney, Mr. C. W. Ashford, on September 13, 1909. The Land Commissioner acknowledged the receipt of the application and later, after investigating the matter, replied further on November 9, 1909, that,

"This department feels that in order to further the best interest of the community, especially the interest of the bona fide Homesteaders, that no more lands will be opened under the settlement association plan, but lands will be opened to bona fide settlers under the ten year form of 'Special Agreement' as soon as practicable and we feel that this method is the best way to conserve the interest of all applicants, and that all members of the Aloha Aina Settlement Association can secure Homesteads in this way."

The attorney replied on December 10, 1909, as follows:

"I note fully your remarks as to that application, and your willingness to deal with the members as individuals, in the assignment of homesteads to them under a proposed 'Special Agreement.' It is immaterial to them or to me, in what capacity they receive the holdings which they applied for, that is, whether as members of a Settlement Association, or as individuals. Therefore, if the same end can be reached through their dealing with you as individuals, and as promptly and cheaply, it is quite possible that such course may be acceptable to them. I would therefore thank you for a form of a 'Special Agreement' under which you propose to deal with them, and for a reference to the Section of the law under which such 'Special Agreement' may be made; and this in the hope that we may be able to 'get together' on the proposition, and secure for my clients the homesteads they desire."

Thus, no objection was made at the time to the method of homesteading proposed by the Land Commissioner. The latter replied the same day inclosing as requested a form of the special

agreement and received no further communication on the subject until after the passage of the amendments to the Organic Act.

The Land Commissioner informs me that on one occasion he stated to the attorney emphatically, but not "violently and profanely," as stated in the complaint, that on account of the abuses of the settlement association plan by dummy and speculative homesteaders, such as those of the Thompson Settlement Association (referred to above under "1, Kaunamano Homesteads"), the administration would not homestead lands by the settlement association plan until the opportunities for such abuses should be removed by the then pending amendments to the Organic Act. The Commissioner probably had reason to be emphatic with this attorney.

The second application was made on June 18, 1910, by twenty-six persons, eleven of whom were residents of the mainland; the Land Commissioner acknowledged its receipt on June 24, 1910, stating that it would be given his early attention, and on July 20, 1910, replied further that the application was not in proper form as required by the amendments to the Organic Act. Applications in correct form were then made out and transmitted to the Land Commissioner under date of September 22, 1910, and their receipt was acknowledged on September 26, 1910. On October 7, 1910, the Land Commissioner replied further that the lands, which were then under lease to the plantation, would be withdrawn as soon as the crop was removed and that surveyors would be placed in the field to subdivide the land as fast as it was cleared. On October 13, 1910, the Land Commissioner wrote further, setting forth the data, which he had meanwhile obtained, in regard to the growing crops, showing the kind of cane, whether plant or ratoon, on each field and the date when it would be harvested, and on October 20, 1910, wrote further that the Governor had approved the withdrawal of certain of these lands immediately, the balance to be withdrawn as rapidly as the crops thereon should be harvested. It, of course, would be unjust to withdraw the lands while growing crops were on them,

and it is expressly provided in the amendments to the Organic Act "that no leased land, under cultivation, shall be taken for homesteading until any crops growing thereon shall have been harvested."

In November, 1910, the Land Commissioner and I visited this land and decided how it should be subdivided and that most of it should be subdivided immediately. It was, however, found impossible to get surveyors at that time (for reasons, see heading "6, Hana Lands," below), and the survey was begun March 15, 1911, and completed July 15, 1911, and was afterward modified slightly. Although there were only twenty-six applicants, thirty-seven lots were laid out, aggregating 906.67 acres, exclusive of roads and flume rights of way, or an average of 24.50 acres, the plan being to put up the lots with the privilege on the part of each homesteader of taking one lot or two adjoining lots, it having been found by experience that often by making the lots too large a person was obliged to take more than he could handle. The plan in question would allow each person to take more or less according to his ability and desire.

The complaint states that the administration insists that the areas of lots shall not be greater than from eight to twenty acres. This is hardly substantiated by the facts in this case. The areas of homestead lots are determined in each case after a careful study of all the circumstances and with a view to making them such as will support a family. Consequently some lots are only a few acres in area while others are as large as the law permits—that is, eighty acres. As shown above under "1, Kaunamano Homesteads," although the lots averaged 48.64 acres each in that case, as a rule only about one-fourth of the land was cultivated by the homesteaders. The Thompson Settlement Association which applied for the Kaunamano land is closely related to the Association now in question. In fact, the Association in question is supposed to have been organized mainly by the president of the Thompson Settlement Association. Two of the members of this Association are said to be his children and two others are children of their attorney, Mr. C. W. Ashford, who are said to have

been in school at that time. One of the most disastrous mistakes of the past in homesteading in Hawaii has consisted in making the lots too large in many cases. See Exhibit G. It must be remembered that farming in Hawaii is very different from what it is on the mainland. The reasons for making lots comparatively small are greater in Hawaii than in the case of the reclaimed lands of the western states. There are many successful farms here of ten acres or less. There is also very little public land in Hawaii suitable for homesteading, and it should not be wasted.

Thus, although considerable, not all stated here, came to the attention of the administration to indicate that the Association in question was formed for speculative purposes quite as much as the Thompson Settlement Association, the administration nevertheless proceeded expeditiously and without hostility to the Association to withdraw most of the land in question for homestead purposes. The remainder was in growing cane and for that reason, not to mention other reasons equally good, was not withdrawn. I am told that this Association or some of its members have concluded to withdraw, or at least have lost interest in this matter, for other reasons than those alleged in the complaint.

The so-called "ten-year agreement" plan is not, as alleged, a scheme devised by me without authority of law. It is provided for by the Revised Laws, Sec. 276, and has been in use ever since the enactment of the Land Law in 1895, under the name of the "Special Agreement" or "Special Homestead Agreement," and is expressly recognized under that name in the amendments of the Organic Act, and was explained by me to the committee of the Senate and House, which favorably reported those amendments (see Exhibit H, containing my statement before the Committee on Territories of the House of Representatives, p. 24 *et seq.* and p. 54 *et seq.*).

The settlement association plan has long been the favorite plan of dummy and speculative takers of homestead lots. Opening

up lands under that method was about as good as throwing them away or selling them outright to corporations or aliens, especially before the amendments of the Organic Act were passed. That plan was intended to meet certain conditions, but was resorted to principally in cases in which those conditions did not exist. It gave a small group a monopoly of the lots desired and was objectionable for that reason also. Since the amendments several tracts have been opened up under that form where the circumstances seemed to warrant it.

In the complaint an attempt is made to show that the "right of purchase lease," which is one of two forms of agreement that may be selected in settlement association cases, is preferable to the ten-year agreement plan, or, as it is generally known, the special homestead agreement, but the facts are misstated. It is true that under the right of purchase lease the homesteader has to pay only eight per cent annually on the purchase price and has twenty-one years in which to pay the purchase price, which must be paid at one time, not in instalments; but under the special homestead agreement payments may be made in ten or fewer instalments at the option of the homesteader and without interest, thus making the cost less and easier to pay than in the case of the right of purchase lease. It is stated also that under the right of purchase lease the homesteader may obtain a patent at any time after he has resided on the land two years, but that he cannot do so under the special homestead agreement until after he has resided on the land ten years; the fact is that under the right of purchase lease, while a person need have lived on the land only two years he cannot obtain a patent until after the expiration of three years, while under the special homestead agreement he may obtain a patent at any time after the expiration of five years if he has lived on the land five years, in periods of not less than six months at a time, and fulfilled the other conditions. There are also other differences between these two forms of homesteading. Their merits and demerits are set forth more fully in the early part of this reply and in Exhibit G. I inclose herewith forms of the right of purchase lease (Exhibit N) and the special

homestead agreement (Exhibit P). These matters were fully explained at the time to the attorney of this Association, Mr. Ashford, in a letter dated November 2, 1910 (Exhibit I).

4. PAHALA PLANTATION FLUME SYSTEM. (Complaint, pp. 21-24)

The complaint in substance is that the Land Commissioner submitted to the Land Board a proposition made by the Pahala plantation to lease for thirty years rights of way twenty feet wide for its entire flume system (fifty-three miles) to the exclusion of all others, and hence that the administration was a party to a supposed plantation scheme to destroy for homestead purposes the Wood Valley tract, the value of which for such purposes is alleged to be dependent upon the use of the flumes by the homesteaders.

Three pages are devoted to this charge, and special stress is laid upon it. It is a fair example of the recklessness and frivolousness with which the complaint abounds. If the statement were true, it would be in effect that I was "most seriously derelict" because the Land Commissioner had merely laid before an official board without comment a matter believed by him to be within the board's legal functions. But the statement is not true.

In the first place, although the plantation has intimated that it would like a lease of some of the flume lines through its cane fields, no application on that subject has ever been submitted to the Land Board, and the administration has not yet considered that matter further than to state that if any arrangement of the kind should be made it would be by way of license and not by way of lease and for a shorter period and with a provision that the flume lines should be maintained by the plantation for the benefit of all homesteaders as well as itself. (A somewhat similar arrangement was made with another plantation a few years ago by which the plantation was given a license for a right of way for twenty years for a portion of its flume system on condition that it should expend not less than \$25,000 in constructing a new flume and maintain it for the benefit of homesteaders as

well as itself.) The flumes in question were constructed by the plantation and the water flowing in them was developed by it by means of tunnels and by collecting water on the surface in the government forest above, which was made possible by the plantation fencing the forest at its own expense and keeping livestock out of it, under former leases from the government. Moreover, the flume lines in Wood Valley would be, contrary to the allegations, utterly useless to the homesteaders without the cooperation of the plantation, because the plantation alone could afford to maintain them; and, furthermore, the portions of the flume system which serve Wood Valley are mostly on private lands owned or leased by the plantation between Wood Valley and the lower lands.

The truth is that the only lease of this nature submitted to the Land Board on the application of this plantation was for the right to maintain certain flume lines in the forest far above the cane lands and to develop additional water there. Also, contrary to the allegations of the complaint, this was not for an exclusive right. Moreover, although, as stated above, the plantation had developed the water on government land, it had not done so, as alleged, without paying anything. Again, the Land Board did not, as alleged, refuse its assent to the proposition. On the contrary, one of its members stated that he would favor the lease subject to the right of withdrawal at any time, and after further discussion the matter was deferred for further consideration. At a subsequent meeting of the Board, the Land Commissioner stated that, as the matter pertained to a forest reserve (when the former leases were made the forest was not a reserve), the application should properly go to the Board of Agriculture and Forestry rather than to the Land Board, and asked leave to withdraw the application, which leave was granted. He then referred the application to the Board of Agriculture and Forestry, which has not yet passed on it.

Further, so far as the minutes of the Land Board show, the Land Commissioner merely referred the application to the Board and made no recommendation. At that time, he often referred matters to it whether he approved or disapproved them. Action

on an application also, of course, need not be merely its acceptance or rejection as it stands. To make a charge, even against the Land Commissioner, and lay stress upon it because he referred, without recommendation, a land matter to the Land Board is both absurd and a slur on the intelligence and honesty of the Board. Even more absurd is it to make this a ground of complaint against me, without whose knowledge that reference was made. The complainant, indeed, does try to connect me with the matter by stating that I must have known the situation because I have recently made a visit to the locality in question, but he omits to state that that visit was eight months after the matter had been referred to the Board.

5. KIHEI HOMESTEADS.

(Complaint, pp. 24-25)

The complaint is in substance that the Land Commissioner attempted to suppress the applications of certain Hawaiian citizens for homesteads on certain lands near Kihei, on the Island of Maui, and to induce the Land Board to approve a later application for a lease of these lands, but that the Land Board discovered the facts and thwarted the attempt; also that after the homesteads were allotted the lessees under a then unexpired lease began cutting algaroba trees upon the land in question, and that upon prosecution being brought to prevent this the Attorney General interfered and became an effectual barrier between the despoilers and the law.

The facts are as follows: The lands in question are the adjoining lands of Waiohuli and Keokea. These lands contain about 16,000 acres extending from the sea to the top of the mountain, 10,000 feet high. The lease was to expire November 1, 1911, and the lessees had applied for a new lease. The Land Commissioner proposed that a large upper portion of the land should be kept as a forest reserve, that the next lower portion, some 1,300 acres, should be leased, that the portion next below, some 1,800 acres, should be homesteaded, that being the only portion deemed by him suitable for that purpose, and that the

lowest portion, some 10,000 acres of dry and rocky land, should be leased. Along the shore, however, was a strip more or less sandy covered with algaroba trees, and the question was whether this also should be homesteaded.

The complaint states that the application for the lease was referred by the Land Commissioner to the Board long after the applications for the homesteads had been received and while they were lying "pigeon-holed" in the land office with no action taken concerning them except a formal acknowledgment. The fact is that the application for the lease was referred by the Commissioner to the Board, as shown by the latter's minutes, on June 16, 1910, while the applications for the homesteads, dated June 22, 1910, were not received by the Commissioner until July 2, 1910, and then not in proper form. The Board then, as was its practice at that time in such cases, gave eight weeks' notice of a public hearing on the question of leasing the land. The Commissioner sent blank forms of applications to the applicants and these were not filled out and returned until about October 1, 1910.

The complaint further states that the Board, believing that applications for homesteads had been presented, called the Commissioner before it to state whether such was the fact and that he denied that any such applications had been received, but stated that there had been merely preliminary correspondence resulting in his sending to the applicants the proper forms to be filled out, but that the Board decided to investigate further and sent to Maui, the island on which these lands are situated, for witnesses as to the facts concerning the applications for homesteads, and that thereafter before the next meeting the Commissioner informed a member of the Board that he had found himself in error and that the applications had been received, but had been put in the wrong pigeon-hole and hence had not come to his attention, and that the witnesses from Maui brought his autograph letter acknowledging the receipt of the applications. This statement on its face, even if it were correct, might well be explained on the theory that the Commissioner erred in memory and corrected his statement as soon as he ascertained the facts, but the statement is not true.

At the meeting in question of the Board, December 13, 1910, as shown by its minutes, the Commissioner was present and not sent for. The original application of June 10, 1910, improper in form, was laid before the meeting, apparently by a member of the Board, and, upon a remark that it had not previously come before the Board, the Commissioner stated that the application had been in his office for some time, that it was not in proper form, but that he had sent to the applicants printed applications in proper form and that they had not been returned to him, but that on a recent trip to that island he had looked into the matter and although satisfied that the applicants desired the land purely for the purpose of stripping it of the algaroba trees for firewood he had nevertheless directed that it be surveyed for homesteads and that a surveyor was then engaged in doing so. A member of the Board then suggested that inasmuch as the blanks had been sent and no action taken thereon the Board should investigate the matter and have it distinctly understood that it would not be trifled with, whether by petitioners for homesteads without any intention of carrying out their representations, or in cases where vested interests were using their influence to prevent homesteading. The Commissioner then stated that the attitude of the administration was to do everything within its power to give every man a home. The Board then voted to send for three of the applicants. At the next meeting, December 19, 1910, one of the applicants stated that he had forwarded the new application on September 30, 1910, whereupon the Commissioner stated, as he had previously stated to one of the members of the Board, that he was in error when he informed the Board that they had not been returned. The hearing was not, as stated in the complaint, for the purpose of ascertaining whether the applications had been returned to the Commissioner but whether the applicants were acting in good faith or merely for speculative purposes. The Commissioner did not, as stated in the complaint, urge the Board to grant the application for the lease as against these homesteaders, but had already given directions for surveying the land for homestead purposes. This matter was

before the Board and the Commissioner exclusively and did not come before me until after the homesteads had been allotted.

After the allotment of the homesteads, which was about two months and a half before the expiration of the lease, complaint was made to me that the lessees were cutting the algaroba trees for firewood on the premises allotted as homesteads. I was under the impression from something I had heard or read shortly before that the lessees had agreed to surrender the lots in question from the lease, but upon inquiry found that that was not so, and then directed the Commissioner to see if he could not persuade the lessees to cease cutting the trees; that failing, I instructed the Attorney General to see if the cutting could be stopped by legal proceedings, and he reported that since there was no appropriate covenant in the lease the cutting could not be stopped in view of a decision of the Supreme Court (*Liu Kong v. Keahialoa*, 8 Haw. 511).

Later, the manager of the ranch on behalf of the lessees was arrested, not, as stated in the complaint, at the instance of the County Attorney of Maui, but at the instance of one of the homesteaders, and the County Attorney wrote to the Attorney General for advice as to what he should do. The Attorney General replied that in his opinion upon the facts stated by the County Attorney a prosecution for malicious injury could not be maintained as the cutting was done under a claim of right and that a civil action would not lie in view of the decision of the Supreme Court above referred to, but stated that he left the matter entirely to the judgment of the County Attorney, and he did not, as stated in the complaint, order that the case be nolle prossed.

Later, when on land business on the Island of Hawaii, I received a communication from the husband of one of the homesteaders requesting me to stop off on the Island of Maui on my return to Honolulu to see further if anything could be done in this matter. I did stop off with the Attorney General and the Land Commissioner and made a special trip to the land in ques-

tion, and upon returning to Honolulu investigated further, but found that nothing could be done.

In fact, the lessees had been cutting at the rate of about forty cords a month for twelve or fifteen years and a few months before the expiration of the lease increased the cutting to about eighty or ninety cords a month. I am informed that there was no cutting on most of the lots in question.

Since then, the lessee of a large tract of land on the Island of Oahu began cutting algaroba trees similarly shortly before the expiration of its lease, but that lease had an express covenant against such cutting, and the Attorney General immediately stopped the cutting and obtained an accounting for the trees already cut by suit in equity.

6. HANA LANDS.

(Complaint, p. 26)

The complaint is that twenty-five or more citizens in the District of Hana on the Island of Maui have applied for homesteads on one of the public lands, which the complainant believes to be Honomaele, but that they can get no satisfaction.

No applications have been received for homesteads on the land of Honomaele, but a number of applications were received from September, 1910, to September, 1911, for homesteads on the lands of Kakio and Waiohonu in the same district. I am informed by the Land Commissioner now, as I was also upon an inquiry by me some months ago, that the reason why these lands have not been opened is that it has been impossible to reach them in the mass of business that has devolved upon the Land Commissioner both because of an extraordinary number of applications for homesteads occasioned by the amendments of the Organic Act a year and a half ago, and because of an unusually large amount of other business.

In consequence of that rush of business, the working force of the Survey Department was increased by the employment of eight additional heads of field parties, besides their assistants, and three additional office men. All available surveyors in the Terri-

tory were employed and several additional ones were brought from the mainland for this purpose. And, besides the usual appropriations, the sum of \$34,749.94 has been expended out of land revenues, as permitted by those amendments, in surveying and opening homesteads during the year and a half since the passage of the amendments. The Survey Department is now rapidly bringing this work up to date.

The cost of surveying homesteads and the time required for it in Hawaii is extraordinary because of the large number of small private lands, many of uncertain location, in the midst of the public lands, the broken character of the topography, and the dense growth and heavy rainfall in certain districts. Each lot, as a rule, has to be given a peculiar size and shape, and irregular roads of great length have to be laid out on account of the grades. I inclose two advertisements (Exhibits Q and R) of land drawings that have taken place during the year and a half in question. These show not only the individual character of the lots but also the large number of lots that have been opened within a short time and their general distribution throughout the Territory. Many more are soon to be opened.

Incidentally, contrary to the statement in the complaint, there is very little public land suitable for homesteading in the District of Hana, and the lands in question are not, as alleged, under cultivation by, or even under lease to, the Kaeleku Sugar Company or any other company or person, and they appear to be very poorly suited to homestead purposes. Naturally, for this reason, as well as because the applications were among the latest received, these lands were left to be surveyed among the last of the lands applied for in the Territory.

7. WAIKEA CAMP SITES AND RAILWAY.

(Complaint, pp. 26-30)

The complaint, in substance, is that the administration recommended to the Land Board the sale of certain camp sites on the Waiakea plantation near Hilo on the Island of Hawaii, and that the sale of the camp sites involves the plantation railway; it is

implied that this recommendation was made for the purpose of giving the plantation an advantage over others when the present lease expires.

This complaint is hardly less frivolous than that under "4. Pahala Plantation Flume System," above. At most, it shows on its face only a difference of opinion between the administration and the Land Board. That Board at first referred the matter to the Land Agent at Hilo, who, after investigation, reported favorably on the proposed sale. Afterward, the Land Commissioner, the Attorney General and I visited each of the camp sites in question and were strongly of the opinion that the sale was advisable in the public interests, though we did not report to the Land Board.

The Land Board, after receiving the report of the Land Agent and before I visited the land, further referred the matter to a committee of two of its members, one of whom visited the camp sites and reported adversely, the other having left the Territory for a time. The Board adopted the adverse report of one of its members. It seemed to me, both from the report of this member and from other circumstances, that the matter was not understood, and later, when the absent member, who was also the President of the Board, returned to the Territory, I took up the matter with him and he undertook to make a further investigation himself, but has not yet reported.

It is true, as stated in the complaint, that the cane land of this plantation, all leased from the government, is one of the best tracts for homestead purposes in the Territory. Indeed, the plantation, feeling that this land or much of it will be homesteaded when its lease expires, has already proposed to the government that it surrender a portion of the land now for this purpose, and that the homesteading be begun now and increased gradually rather than that it should all take place at one time when the lease expires. Even after this land or a large portion of it is homesteaded, subsequent to the expiration of the lease, the plantation will probably need these sites for its employees' houses, stables, and so forth.

In my opinion the sale of these camp sites does not to any appreciable degree affect the question of the railway, some sixteen miles or so in length, which runs from the mill by or through each of these sites.

The aggregate area of these camp sites is only 74.44 acres, appraised at \$3,145.60 as the upset price at which they would be sold at public auction. They consist chiefly of patches of lava rock and swamps unsuitable for homestead purposes, and the principal reason why the plantation desires to purchase them is in order that it may improve them and erect on them sanitary camps to conform to the recommendations of the Board of Health. One of the most important policies of that Board during the last two years has been to enlist the coöperation of the plantations throughout the Territory in this matter, the plantation camps being the chief danger points for contagious diseases in the country as the tenement houses are in the towns. I recently visited one of the camps thus constructed in accordance with the new policy on another of the plantations under the same control as the plantation in question. It is an elaborate camp, costing thousands of dollars, with a park of trees, gardens between the houses (for the best maintenance of which prizes are given), houses of good size and well arranged and with superior plumbing and sewerage systems, large hot water baths, sanitary laundry, and so forth. The result in the health of the employees has been marked. The plantation in question has undertaken to erect similar camps on the sites in question if they are allowed to purchase them. The President of the Territorial Board of Health and the Chief Sanitary Officer at Hilo were much disturbed over the action of the Land Board, because it thereby placed a serious obstacle in the way of the health authorities in carrying out their important policies in regard to plantation camps.

The lease of the land in question will expire in about six years and a half and the plantation feels that it cannot safely invest so much capital in such camps on so short a lease. The Organic Act expressly provides for sales of such camp sites, as they are

usually called here, or "houses for employees," as they are called in the Organic Act. The Land Board has approved similar sales on other plantations and in the adverse report of the member of that Board in the present case one such other sale was referred to and justified on the grounds that the sites were upon leased lands which could be withdrawn from the lease at any time and hence that the plantation was not "in a position to put any improvements of value on a camp site within the leasehold premises. The plantation owned no land of its own in the proper locality for the camp site and could not get a proper site from third parties; under these circumstances it was apparent at once that the request for the purchase of a camp site in fee simple should be complied with." The same reasons, in my opinion, apply in the present case.

8. LANDS OF KEALAKO, KAALAIKI, AND REMNANTS OF KAUNAMANO.

(Complaint, pp. 31-32)

The complaint is, in substance, that although applications have been made repeatedly for these lands for homesteads since the organization of the Thompson Settlement Association, the administration has steadfastly refused to assign them for homesteads and in particular that one John Greig prosecuted a suit to compel such an assignment to him, but that the government, by the Attorney General, defended the suit. It is stated also that these lands are among the best in the district and are situated in the midst of the Hutchinson Plantation referred to above under "1. Kaunamano Homesteads."

"Kealako" is a mistake for "Kioloku," a land which has been in the possession of the plantation for nearly forty years under claim of title, and which therefore cannot be homesteaded until the title is settled. See "12. Kioloku Land," below.

As to the land of Kaalaiki, the only applications for this (and certain other lands together) in recent years were received by the Land Commissioner on July 15, 1910, in improper form, and

during September and October, 1910, in proper form, and on November 22, 1910, the Land Commissioner notified the lessee plantation of his intention to withdraw this land for homestead purposes, and requested information of the lessee as to when the growing crops would be harvested. I am informed that the lands have not been opened because they have not yet been reached in the mass of work which the Land Commissioner and Surveyor have in hand, owing to the large number of applications for homesteads since the passage of the amendments to the Organic Act. See "6. Hana Lands," above. On January 5, 1912, in response to an inquiry, the Land Commissioner explained the situation as above stated. It was deemed best in meeting the rush of applications for homesteads, after the amendments of the Organic Act, to survey the best lands first, and as far as practicable some in each district rather than all in some districts and none in others. In this district, during the last year and a half, there have been opened up, besides twenty-one so-called preference rights lots and fifty taro lots, 137 homestead lots, many of which have not yet been taken, and besides these there have been surveyed and are about to be opened, the thirty-seven additional lots referred to above (under "3. Aloha Aina Settlement Association") in Wood Valley, and a number of lots in Kaunamano in the same district. The land in question is not, as stated in the complaint, one of the best in the district. On the contrary, it is mostly dry and rocky and only a few hundred acres of it are fit for cultivation, and that is poor agricultural land.

As to the Kaunamano remnants, the statement is not true that the administration has refused to homestead any of these since the organization of the Thompson Settlement Association. It has homesteaded seven of them since then, and the remaining lots are about to be opened. All of these, indeed, except one, had been offered before the amendments of the Organic Act, but they were not all taken.

As to John Greig, he applied for a particular lot in this tract under the right of purchase lease form of homesteading, and claimed that he had a legal right to receive that lot under that

form. The administration, however, disputed this as a matter of law, and in a letter to his attorney I personally set forth the reasons at great length. (Exhibit J). Moreover, three other persons applied for the same lot before he did, one of them expressly asking for the lot on the special homestead agreement plan and the others not indicating any preference. A number of others had also applied for a lot in this tract without specifying which lot. It was deemed best by the Government to put the lot up on the special homestead agreement plan, both because it was the most appropriate plan in that instance, and because a prior applicant had asked that it be put up under that form of homesteading. Mr. Greig then instituted a suit, but, of course, failed to sustain it. The lot in question was put up with others, but this one was afterward withdrawn for the time being, because it was found that there was a growing crop on it. The other lots in the same tract were not all taken.

9. KEKUPULAU SETTLEMENT ASSOCIATION.

(Complaint, pp. 32-34)

The complaint in this instance is similar to that under "3. Aloha Aina Settlement Association," namely, that on the first application of this Association for homesteads, before the passage of the amendments to the Organic Act, about two years ago, the administration refused to homestead the land on the settlement association plan or any other plan except the special homestead agreement plan, thereby exercising an arbitrary discretion; and that on the second application, after the passage of such amendments, the administration subdivided the land into lots so small as to make it impossible for the homesteaders to make a living from them.

The lands in question are those of Kulaimano, Kaieie and Kawainui, in the District of Hilo on the Island of Hawaii. They are highly-developed cane lands.

The first applications were made by fourteen persons in December, 1909, and January, 1910. The Land Commissioner informed them that the land would be homesteaded only under the

special homestead agreement plan. The second applications were made in June, 1910, by thirty persons. The Land Commissioner then withdrew from the leases to the plantation the two largest, Kulaimano and Kaieie, of these lands and laid out fifty-four lots, although there were only thirty applicants.

That the administration may decide whether a given tract of land shall be opened under the special homestead agreement plan or under the settlement association plan cannot be questioned. Indeed, the administration is given large discretion in many respects in the execution of the land laws, just as the Secretary of the Interior is given much discretion in the matter of homesteading reclaimed lands in the western states. There is much greater need for the vesting of such discretion in the executive officers in Hawaii than on the mainland, because of the great variety of conditions existing in these islands. It is merely a question whether in the case of each particular tract the administration should decide in the public interests which of several methods of homesteading should be applied or whether speculators should so decide regardless of the public interests.

In this instance it was clear that the applicants, or most of them, had no idea of settling on the land and that their object was purely one of speculation or investment, for which purpose the settlement association plan is admirably adapted. The special homestead agreement plan is the one most favorable to the bona fide settler and the least favorable to the mere speculator.

In this particular case, however, the administration could not as matter of law have homesteaded these lands under the settlement association plan, for they were not all adjacent. The law (Revised Laws, Sec. 329) requires that the lots taken by a settlement association shall be "in one block of land."

The policy as to sizes of lots is covered under the heading "3. Aloha Aina Settlement Association," and need not be further referred to here, except to say that notwithstanding their smallness (12 19 acres on the average) all of the fifty-four lots in this case were taken.

10. PRICES OF HOMESTEAD LOTS.

(Complaint, p. 34)

The complaint is that homesteads are sold at unreasonably high prices but leased to plantations at unreasonably low rentals, and in support of this it is stated that the lots on one of the lands, Kulaimano, applied for by the above-mentioned Kekupulau Settlement Association, were sold at the rate of \$90 per acre, the rental upon which under a homestead right of purchase lease would be 8 per cent of the price, or \$7.20 per acre per annum, while the rental paid by the plantation for this land under a general lease was only \$2.00 per acre per annum.

The land in question, Kulaimano, was sold, not as alleged, at \$90 per acre, but on the average at \$79.28 per acre, 8 per cent of which would be \$6.34 per acre, while the rental paid by the plantation was exactly the same, \$6.34 per acre—that is, \$2,200 for the 347 acres, and not, as alleged in the complaint, \$2.00 per acre. The plantation offered to buy this land at \$150 per acre, or nearly twice as much as the homesteaders paid for it. The price, also, did not deter homesteaders from taking it, for every one of the fifty-four lots was taken at the first drawing. It is one of the best sugar cane lands on the Island of Hawaii. Moreover, under the special homestead agreement plan, under which this land was homesteaded and which is objected to by the complainant, no interest whatever is paid by the homesteader. The other land, which was opened on the application of this Association, namely, Kaieie, is not as good land and was sold at \$36.94 per acre. It may be added that appraisements of homestead lands are made by residents in the locality of the lands in question, and that in this case, for the first time, the appraisalment thus made was not reduced by the Land Commissioner.

The price at which highly-developed land should be homesteaded is a question not altogether clear, but it would seem that such land, like the reclaimed lands in the western states, should bear a closer relation to the real value of the land or the cost of its development than has hitherto been the case. The plan of

administration is to make the terms of payment easy but to make the price such as will avoid inducement to speculation and discourage the idea of getting something for nothing. In most cases the prices obtained have not been sufficient to pay for the construction of the necessary homestead roads, and by charging more nearly their real value there will be more available for making homesteading successful by constructing such roads. Under the special homestead agreement the terms of payment are so framed as to enable any bona fide homesteader to pay for the land out of its products.

11. UNREASONABLE RESERVATIONS FAVORING CORPORATIONS.

(Complaint, pp. 34-35)

The complaint is, in substance, that the administration in its land policies favors the plantations, first, by reserving the most valuable lots near the main government roads so as to exclude competition with the plantation stores by preventing the establishment of independent stores, and, secondly, by making homestead lots too small to enable American farmers to make a living for themselves and their families from the soil and so as to create a necessity on the part of the homesteaders to sell their surplus labor to the neighboring plantations. The recent subdivision of the land of Hakalau-iki in the District of Hilo is cited in support of this.

The statement in the complaint, that every plantation conducts its own store where it deals in all manner of merchandise and uses every means to prevent competition, is untrue. A number of plantations do not conduct stores; some plantations which do conduct stores deal only or mainly in certain staples; at least some of the plantations encourage independent stores and some continue to maintain their own stores purely for the convenience and protection of their employes. In fact, at Hakalau, on the plantation in question, as well as on most of the plantations, there are a number of independent stores.

My attitude in this matter is shown in part by the fact that on March 30, 1910, I addressed a meeting (held at my special request) of the trustees or directors of the Sugar Planters' Association upon about a dozen plantation policies relating to their employees, several of which policies related to their stores, and urged among other things that the plantation stores should sell at cost all necessities such as food and clothing to the employees, who are the principal patrons of those stores as well as of the independent stores. I am glad to say that as a result that policy was adopted and has been continued ever since.

The land of Hakalau-iki, referred to in the complaint, is a long, narrow land. It has a frontage of about 2,150 feet on one side of the main government road. About 650 feet of this frontage is occupied by a public school lot, a Catholic mission lot, and a road. A strip about 300 or 400 feet wide along the remaining 1,500 feet was reserved from the homestead area, not, as stated in the complaint, in order to prevent independent stores from becoming established thereon, but, on the contrary, for the very purpose of disposing of it in smaller lots so as to accommodate a larger number of persons and devote the strip of land to the purposes for which it was best suited in view of its location by enabling it to be used for residences, stores and other similar purposes—that is, by dividing it up very much as town lots. This was done in pursuance of a general letter of instructions, dated April 1, 1911, from the Land Commissioner to the surveyor, by my directions, to reserve from homestead areas and subdivide into lots of one, two and three acres each a narrow strip along the main government road in the more thickly settled districts.

In regard to the size of the lots, the land in question is subdivided into fifty-two lots, averaging 12.70 acres each. Lots of this size or smaller sizes have proved by experience to result in the most successful homesteading in this portion of this district, especially because of the class of people who desire such lots in good faith for homesteading purposes. I need not enlarge here on the reasons for this, but refer to the headings "3. Aloha Aina Settlement Association" and "9. Kekupulau Settlement Association."

12. KIOLOKU LAND.

(Complaint, p. 36)

The complaint is, in substance, that the administration has shown solicitous care of the Hutchinson plantation in that it has not taken steps to recover the land of Kioloku, which, it is stated, is government land long occupied by the plantation without authority, and that the last legislature instructed the Attorney General to take steps, but that no action has been taken by the administration in the premises.

The legislature did not give any instructions to the Attorney General on this subject, but I gave the Attorney General instructions several months before the legislature met to investigate this matter and take such action as the facts should warrant. The Attorney General at once proceeded to investigate the matter, but, owing to the legislative session and an unusually large amount of work in connection with public health and other matters, has not yet brought suit. He informed me, however, a month or two ago that he hoped to be able to begin action soon.

What was done in the last legislature in this matter was that the House of Representatives asked the Land Commissioner certain questions in regard to this land, to which questions the Land Commissioner replied, and nothing further was done by the legislature or either of its branches (House Journal, 1911, pp. 358, 424). The House Journal itself shows that the matter had been referred to the Attorney General several months before and also sets forth in part the title under which the plantation claims. The plantation claims title through mesne conveyances under a deed of July 15, 1873, from David Kalakaua, who a little later became king.

The administration has frequently instituted suits against sugar plantations and other large concerns or forced them to institute suits against it, and has not hesitated to do so in any case where it believed the public interests required it. Indeed, one of the policies of my administration has been to clean up a vast number of matters handed down during the last half cen-

tury or so, such as the settlement of titles and boundaries and collection of back taxes, rents and claims of all sorts due the government. It has been necessary, I regret to say, to bring several of these cases against the complainant's estate, known as the Kapiolani Estate, Limited. One of these cases concerned a tract of public land urgently needed for the site of the College of Agriculture and Mechanic Arts. The Estate held under an old lease from the government which had recently expired. It had also refused to pay rent for about six years, and it was necessary to bring actions, which were successful, to recover both the land and the back rents. These actions were bitterly resisted by Mr. C. W. Ashford, the Estate's attorney, with the result that it took several years to finish them. It looks also as if the administration would have to bring another action against the complainant's Estate in the near future. This is for a tract of land in the City of Honolulu, the lease of which to that Estate will expire on the first of next August. There are now settled upon this land, under sub-leases, several hundred Portuguese, Anglo-Saxon, Hawaiian and other families. For some years past these residents have been very anxious to be in a position to purchase their homes when the lease expires. The complainant, several years ago, introduced a bill in Congress for this purpose, by request, I believe, but apparently did not press it. Accordingly, I inserted a provision for this purpose in the amendments of the Organic Act, which were drafted by me and enacted about a year and a half ago, giving the residents who had resided and made improvements on their lots since the organization of Territorial Government a preference right to purchase their lots at an appraised valuation. The complainant, however, as well as his attorney, Mr. C. W. Ashford, and the manager of the Estate, Mr. J. F. Colburn, for more than a year now, have endeavored to sell the remainder of the lease to the government at an exorbitant price and threatened that unless the government should pay such price, although the purchase would result in little or no advantage to either the government or the residents, he might refuse to surrender possession on the expiration of the lease and by prolonged

litigation prevent the residents from obtaining their homes for several years, as he stated he did in the case of the College of Agriculture and Mechanic Arts. Every effort has been made by them to obtain \$20,000 for a surrender of this lease—in the last election campaign, in the last legislature, and with me. The legislature finally passed a bill appropriating that amount, not, as urged by them, to pay for the surrender of the lease, but for facilitating the granting of the preference rights in question in any way deemed advisable by the administration, whether by the purchase of the remainder of the lease or in other ways, provided that the residents should reimburse the government. Both the residents and the government have decided that the surrender of the lease would be of little aid and that the price demanded is unwarranted. The administration has also for years experienced great difficulty in collecting the taxes of the complainant, the Estate, the attorney and the manager. Suits have had to be brought against some of these for this purpose.

13. MOAULA LANDS.

(Complaint, pp. 36-37)

The complaint, in substance, is that public lands are leased to corporations in preference to homesteading them with citizens; that, although leases are sold at auction, such sales are farcical because the up-set price is what is offered by the plantation that applies for the land and there is no competition, each leased land being within the sphere of influence of some one plantation; and by way of illustration it is stated that the Moaula group of lands aggregating 11,000 acres in the District of Kau on the Island of Hawaii are within the sphere of influence of the Pahala plantation and that they are being advertised for rent in the face of pending applications for homesteads on them.

Most of these lands are at a high altitude in the forest reserve, and it would be impossible to homestead that portion because of its character even if it were not so reserved. Another large portion is at a low elevation and so dry and rocky that it likewise

could not be homesteaded—so dry and rocky, indeed, that the plantation does not care to lease it. In fact, of the entire area of 17,160 acres comprised in this group of lands, the plantation leases only 1,954 acres, of which 937.95 are cane land.

Thirty-one persons applied for homesteads on these lands informally in June, 1910, and formally in November, 1910. The Land Commissioner and I visited these lands and other lands in that district in the same month of November and decided that under all the circumstances it was inadvisable to open these lands for homesteading at that time.

It seemed doubtful whether any of these lands could be successfully homesteaded then. It was believed that the Wood Valley land in the same district was far more suitable for such purposes and would supply all immediate demands of homesteaders, and surveyors could not be obtained for surveying both tracts. Indeed, it was not until four months later that surveyors could be obtained to survey the Wood Valley tract alone and that survey took four months. It had been found also that about that time petitions for opening lands for homestead purposes were being signed by many persons who had no idea of taking the homesteads if they were opened. It would be disastrous to withdraw large areas of cultivated land only to have them go to weeds for want of homesteaders. If, when the Wood Valley land is opened, the demand for homesteads in that district is not satisfied, the lands in question can be withdrawn and opened at any time under the terms of the leases. Not to have leased the land at that time would have been to allow it to go to weeds before it could be homesteaded and thereby increase the probability of its not being successfully homesteaded later.

In regard to the leases to the plantations, in this instance there were two leases. They did not, as perhaps implied in the complaint, cover 11,000 acres. One covered only 138.72 acres, and the other only 467 acres, of which 288.76 were cane land. It is true, generally speaking, that there is no competition between plantations for leases of public lands—or private lands either. This is due in part to physical barriers and the distances between

plantations, and in part, as stated in the complaint, to the disposition of plantations not to encroach upon what is deemed each other's territory, but it is not true that the up-set prices of leases are what the plantations offer. In this particular case, the plantation offered \$900 per annum for the cane land of Moaula and the up-set price was placed, after investigation on the ground, at \$1,443.80, or \$5.00 per acre per annum, and the general practice has been to fix the up-set rental at what is deemed to be a fair rental irrespective of the offers of the plantations. This is for the very reason that there is seldom competition at auctions of leases of cane land. An investigation is usually made—sometimes including an examination of the plantation books in order to ascertain the cost of cultivation and yield of the particular tract.

14. KAPAA LANDS.

(Complaint, pp. 37-40)

The complaint in this instance is not against me, but against a particular plantation by way of illustration of a general complaint that the plantations are hostile to homesteading.

While there is much difference in this respect between different plantations, there can be no question that altogether too little sympathy with homesteading has been manifested by the plantations generally, but no one regrets this more than I, and no one has endeavored more than I to bring about a change in this respect, and no one is more gratified than I that a change is gradually taking place in this respect, though not so rapidly as I would wish. Already a number of plantations are coöperating with the administration, in some cases at considerable expenditure, in homesteading public lands, and in two cases at least in homesteading their own private lands. See heading "Public Lands," above.

The statement in the complaint that the administration has invariably selected for homestead purposes only such lands as the plantations did not want and could not use for sugar culture, with the single exception of the lands in question—that is, the

Kapaa lands, is without foundation. In the first place the only portion of the Kapaa lands which it has been possible thus far to homestead has been land other than cane land and which the plantation did not want for cane, though some of the homesteaders are now planting cane on it, and therefore this is not an exception to the rule, if there is such a rule. But there is also no such rule. During my administration, 5,105.08 acres of sugar cane land, most of it of superior character even as sugar cane land—that is, about one-third of all the government sugar cane land available for homestead purposes, has been withdrawn for such purposes from the plantations and the greater part of it has already been opened, the remainder having been surveyed and being about to be opened. Moreover, there are numerous cases in which lands other than cane lands have been homesteaded which are among the best lands in the Territory for such purposes; in some cases such lands are far better adapted for such purposes than the neighboring cane lands.

The Kapaa land question has been the “cause célèbre” in lands leased to plantations as the Thompson Settlement Association question has been in fake homesteading. These lands are of large area and are sandwiched in with the plantation’s private lands. They also comprise much rice, pasture, forest and other lands as well as many town lots, and they involve large questions of irrigation. As the expiration of the old leases approached it became a problem of importance to both the administration and the plantation what to do with them.

This problem assumed an acute stage two years or so before my administration began, and during my administration it has been gradually solved at the cost of much time and thought and money, but has not yet been completely solved. I have gone so far as to allow thousands of acres of cane land on this plantation to go to weeds because the plantation was not willing, until lately, to accede to terms satisfactory to the administration. The problem was the most complicated and difficult that has yet arisen in connection with the administration of public lands in these islands. Another important step in the solution of this problem has been

taken this month by the approval by the Land Board of a novel form of short lease, of some of these lands, devised by me, under which the lessee will construct much needed irrigation works at large cost and thereby greatly increase the area of land available for homesteading.

15. INJUSTICE OF PLANTATIONS TOWARD HOMESTEADERS.

(Complaint, pp. 40-43)

The complaint is, in substance, that the plantations treat homesteaders harshly and unjustly and particularly in not paying sufficient for the cane raised by them, as illustrated in the case of the Thompson Settlement Association, and that my administration is at fault because it does not insist that immigration shall no longer be assisted financially by the Territory in order to furnish laborers for the plantations unless the planters agree to pay homesteaders a specified price for sugar cane.

As already stated above in more than one place, no one is more desirous or has striven more earnestly and constantly for a friendly, helpful attitude toward homesteaders on the part of the plantations, than I have, and not altogether without success. The illustration of the Thompson Settlement Association is an unfortunate one for the complainant in view of the facts stated above under the heading "1. Kaunamano Homesteads." See especially the last paragraph under that heading.

As to immigration,—incidentally, the Territory has not, as stated in the complaint, introduced immigrants from the Philippines. The planters have done that. The Territory has introduced only Caucasians, and those only from the United States, Europe and the Atlantic islands, and Russians from Siberia and Manchuria. Moreover, it does not introduce them exclusively for the sugar plantations. The immigrants, upon arrival, obtain employment where they please in whatever industry they please or maintain themselves independently. Most of them, it is true, engage at first on the plantations, for that is where there is the

largest demand for labor, and in general they are obliged to secure employment from others until they can save enough to take up land or set up in business independently for themselves. No discussion is called for at this time by me of the proposition made by the complainant that further immigration should be made dependent upon the plantations paying higher prices for sugar cane. If that is a commendable and practicable proposition, my failure hitherto to insist upon it, if I could, is equaled, if not excelled, only by the failure of the complainant to suggest it to me or, so far as I know, to anyone else hitherto. I may suggest, however, that the proposition might run counter to the views expressed on page 48 of the complaint in regard to the character of the population of the Territory. I may add that I have used my efforts not only for higher prices for the products of homesteaders but also higher wages for employees on the plantations, and that some progress has been made in these directions—more in the case of wages than in the case of cane prices. Since annexation the minimum monthly wage has been increased from \$12.50 to \$20.00 and a bonus varying with the price of sugar, besides house, fuel, water and medical attendance; and the independent planting contract system has been extended so that most of the laborers receive far more. I, of course, am not claiming credit for this.

16. TRANSPORTATION MATTERS.

(Complaint, pp. 43-46)

The complaint in this instance is largely of a general nature, and is answered sufficiently in the portion of this reply devoted to the general charges. See heading "Transportation Facilities," above. It is also hardly necessary to point out inaccuracies of statement in immaterial matters, such as that there are only four, instead of seven, railroads in the Territory—besides the private railroads.

Two specific matters are referred to in connection with the Hilo Railroad Company, apparently with the intention that it

shall be inferred that the personal interests of myself or my connections control my official acts.

In the case of the Hilo wharf, the plan is to transfer the shipping center at Hilo from the present Hilo Bay to a more suitable bay protected by a recently constructed breakwater, a mile or so further from the town. The first question was whether the government should build and maintain the wharf as a public wharf or whether the railroad company should build and maintain it under a license to do so. The legislature decided, as I also had recommended, that the wharf should be a public one, and \$200,000 were appropriated for it, but with a proviso that the appropriation should be expended only in case the railroad company should enter into a satisfactory contract to extend its railway to the wharf and operate it as a common carrier to the wharf for at least ten years. This was in order to insure the use of the wharf; otherwise, the expenditure of the money would have been futile. A form of contract was then proposed, not by the administration, as stated in the complaint, but by the railroad company, to the appropriate public body, namely, a Board of Harbor Commissioners consisting of five members, and before action was taken on it a public hearing was had, and, indeed, several public hearings. The proposition related to both the plan of construction and the use of the wharf. The Inter-Island Steam Navigation Company, which was the principal concern whose interests were supposed to be to some extent adverse to those of the railroad company, objected to some features and proposed other features. The Harbor Commission, however, acted independently, accepting and rejecting features proposed by each—that is, by the railroad and the steamship companies, and inserting other features on its own account. I have had nothing to do with this matter to the present time, either on the side of the government or on the side of the railroad company. It was a matter exclusively for the Board of Harbor Commissioners. That Board seems to have arrived at a conclusion satisfactory to the public.

It is also charged that the administration has arbitrarily attempted to move the Hilo armory from its present to a less desir-

able location for the purpose of enabling the railroad company to utilize the site of the armory and extend its lines thence upon a public street. The administration has had in mind for some time the removal of the armory but to a more desirable location and with a view to selling the present site at public auction and using the proceeds in the purchase of other property in the same town for public purposes. The railroad company has never sought the armory site, and I understand has never had any thought of purchasing it, and certainly had nothing to do with the plans of the administration in this matter. Some time after the proposition to change the armory site was announced, the railroad company was given the privilege of constructing a short spur track to the rear of the present armory site, in case the latter should be sold. This privilege was asked by the railroad company at the desire of an intending purchaser of the armory site, who proposed to use the site for a warehouse and wished the convenience of railroad communication to it. The spur was not to be on a public street but along a river bank where the company would have to fill in order to lay its track, although that strip is a street on the map.

It is further stated, in order to support the charge that I have been remiss in not attempting to bring about an improvement in transportation matters, that I have recently prevented the adoption by a Territorial Republican Convention of a plank proposed by the complainant for legislation providing for an investigation and regulation of transportation rates. This is absolutely without foundation. The only way in which I can explain it is that the complainant has listened too credulously in this matter as well as in other matters to persons who apparently have not hesitated to use him for their own purposes; and yet this explanation is not satisfactory because, so far as my memory goes, or so far as I can ascertain upon inquiry of members of the platform committee of that convention, the complainant never attempted to have such a plank inserted in the platform. I cannot speak definitely as to this. Anyone who knows my attitude in this matter knows that I would never oppose the insertion of such a plank in the party platform.

17. EXPIRING LEASES.

(Complaint, pp. 46-48)

It is stated that leases of many public lands will soon expire and the lands thereby become available for homestead purposes, and that it is extremely necessary to homestead these intelligently in view of the large Japanese population in these islands and the military plans of the Federal Government in Hawaii, but that under the policies heretofore prevailing there can be no hope for such homesteading.

The two lands particularly referred to, as well as a number of others, will not become available for homesteading through the expiration of their leases until long after my administration ceases, but nevertheless I have taken steps to prepare for that day by having, among other things, a topographic and hydrographic survey made of the entire islands with a view to laying out the best plans for utilizing such lands and other lands in the best possible way through reclamation by irrigation and in other ways, and I recently opposed the passage of a resolution by the legislature to request action by Congress which would tie up such lands for a considerable period longer under such leases. My homestead policies as set forth to some extent in the first part of this reply speak for themselves.

As to homesteading the public lands with Americans, I am glad to learn that the complainant at last favors this, and I am also glad to be able to state that the passage of the amendments of the Organic Act a year and a half ago, which were devised and drafted by me, is now making it possible to induce Americans to come to this Territory. For instance, I am now settling thirty-one American families on one tract of public land and surveying additional adjoining land for others who have already applied, and more inquiries from possible settlers from the mainland are being received by the Land Commissioner, the Commissioner of Immigration and myself now than ever before. The Territory is also pursuing a vigorous policy through its Immigra-

tion Department of introducing Caucasians who are or will become desirable citizens.

Very respectfully,

W. F. FREAR,
Governor of Hawaii.

The Secretary of the Interior.

APPENDIX.*

EXHIBIT A.

THIS AGREEMENT, made this.....day of , A. D. 1908, by and between HUTCHINSON SUGAR PLANTATION COMPANY, a corporation existing under and by virtue of the laws of the State of California, and having a place of business within the Territory of Hawaii, party of the first part, and hereinafter known and described as the COMPANY, and..... of Waiohinu, Kau, County of Hawaii and Territory of Hawaii, party of the second part, hereinafter described and known as the PLANTER.

WITNESSETH :

THAT WHEREAS the Planter did heretofore apply to the Commissioner of Public Lands of the Territory of Hawaii for right of purchase lease of a certain lot or tract of land situate in said District of Kau, and being Lot #..... of the land of Kaunamano; and

WHEREAS said lot has been allotted to the Planter under certain terms and conditions as set forth in right of purchase lease #.....; and,

WHEREAS approximately acres of said lot are fit for the cultivation of sugar cane;

NOW THEREFORE it is agreed between the parties hereto as follows:

* This appendix includes only the seven exhibits relating to the Thompson Settlement Association, referred to under the heading "1. Kaunamano Homesteads." Most of the other exhibits have been published previously in pamphlet form.

First: The Company will, during the term of this Agreement properly cultivate and harvest the growing crops of sugar cane now planted upon said lot of land and will manufacture into marketable sugar all of said cane that may be grown upon said lot during the term of this agreement and without expense to the Planter;

Second: The Company will construct upon said lot a dwelling house for the planter, at a cost not to exceed Three Hundred (\$300.00) Dollars, to be located on said lot as may hereafter be mutually agreed;

Third: The Planter will during the term of this agreement, in no way interfere with the Company in the cultivation of the crops upon said lot, retaining only sufficient area upon which to locate the house hereinbefore referred to; and necessary out-buildings, trees and yard—the whole not to exceed an acre in extent;

Fourth: The Planter will execute a good and sufficient mortgage to the Company to secure the payment of the amount expended in the erection of said dwelling house, principal and interest payable to the Company three years from January 1st, 1908, interest computed at the rate of 6% per annum;

It is mutually agreed that at the termination of this agreement if the Planter no longer desires to reside upon said lot that the Company will, (at the election of the Planter) take over said dwelling house if in good condition, ordinary wear and tear excepted, and the lot upon which the same is situated, and release the principal sum of said mortgage upon a sufficient conveyance of said dwelling house and lot.

The Planter's share in the sugar manufactured from cane grown upon this lot shall be equal to one-half thereof as shown by the books of the Company. The Company shall first charge against said one-half share of sugar all costs, expenses and charges for the cultivation and manufacture and marketing of said sugar and shall then pay to the Planter the balance of the proceeds calculated upon the current price of sugar in the market of San Francisco, California, but the Planter in no event to

participate in the profits, earnings or proceeds of said one-half share of sugar in excess of the sum of Eight (\$8.00) Dollars per acre per annum of land now actually cultivated in sugar cane, but excepting from said area the house lot so to be selected by the Planter and such right-of-way thereto. And the Company hereby agrees and guarantees to said Planter, that the proceeds from said one-half share shall not be less than Eight (\$8.00) Dollars per acre of such land so now cultivated, per annum.

This agreement shall be in force for the full term of Three Years from January 1st, 1908, and the Planter hereby stipulates that no claim shall be made upon the Company for any entry upon said lot or the removal of any crops therefrom prior to said January 1st, 1908. That during the term of this agreement the Planter will promptly pay all charges due to the Government of the Territory of Hawaii, except taxes for growing crops, and will otherwise fully conform to all the requirements of said right of purchase lease.

IN WITNESS WHEREOF the parties have hereunto set their hands, the day and year first above written.

EXHIBIT B.

THIS AGREEMENT, executed this 29th day of February, A. D. 1908, by and between.....of Waiohinu, in the District of Kau, County and Territory of Hawaii, hereinafter named the Vendor, party of the first part, and Hutchinson Sugar Plantation Company, a California Corporation, conducting a Sugar Plantation, etc., in said District of Kau, hereinafter named the Vendee, party of the second part;

WHEREAS said Vendee is the Lessee and occupant of that certain tract of land situate at Kaunamano, in said District, known as Lot #....., Kaunamano Homestead, upon which there is now growing, and upon which there may hereafter during the years 1908, 1909, and 1910, be planted or otherwise cultivated and growing, a crop or crops of sugar cane, which said crop and crops it has been agreed shall be sold by said Vendor to said Vendee, and by said Vendee paid for as hereinafter provided,

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

THAT said Vendor doth hereby sell, assign, transfer, set over and deliver to said Vendee all and singular the said crop of sugar cane which is now growing upon said premises and which shall be cut and removed therefrom during the year 1908,—and said Vendee doth hereby take and purchase the said crop, at and for the sum and price of Dollars, the receipt whereof by said Vendor from said Vendee is hereby acknowledged. And in consideration of said purchase and sale, and of the payment of said sum of money, the said Vendor hereby agrees that said Vendee may cut and remove said crop of sugar cane from said premises at any time within the year 1908.

And said Vendor doth hereby agree to sell and deliver to said Vendee, and said Vendee doth hereby agree to purchase, accept and pay for all and singular the crop of sugar cane that shall grow or be growing upon said premises within and during the year 1909, at and for the further sum of..... Dollars, which said sum said Vendee hereby agrees to pay to said Vendor in two equal instalments of..... Dollars each, upon the first days of January and July in said year 1909,—and said Vendee is hereby given a like privilege to cut and remove such said crop from said premises at any time during said year 1909;

AND said Vendor doth hereby agree to sell and deliver to said Vendee, and said Vendee doth hereby agree to purchase, accept and pay for all and singular the crop of sugar cane that shall grow or be growing upon said premises within and during the year 1910, at and for the further sum of..... Dollars, which said sum said Vendee hereby agrees to pay to said Vendor in two equal instalments of..... Dollars each, upon the first days of January and July in said year 1910,—and said Vendee is hereby given a like privilege to cut and remove such said crop from said premises at any time during the said year 1910;

IT IS MUTUALLY UNDERSTOOD AND AGREED that if said Vendee shall fail or neglect to remove, during the year 1908, said crop now growing upon said premises, it shall not be thereby or at all entitled to any return or recoupment of the sum so paid by it to said Vendor for said crop, and the receipt whereof is hereby acknowledged. And in like manner, if said Vendee shall neglect or fail to cut and remove from said premises during the year 1909, the crop that shall be growing thereon, during said year 1909, such failure or neglect shall in nowise entitle said Vendee to any return or recoupment of any sum that shall have been paid by said Vendee for or in respect of said crop of 1910;

IN WITNESS WHEREOF the said Vendor hath hereunto set his hand and seal, and said Vendee hath caused this Instrument to be signed by its Manager, the day and year first above written.

EXHIBIT C.

Agreement executed February 29, 1908, between the Hutchinson Sugar Plantation Company and the undersigned members of the Thompson Settlement Association.

Recites the fact that the subscribing members have made contracts with the Company whereby they have sold and the Company has purchased the crop or crops of cane now growing or that shall grow during 1908, 1909, and 1910, upon the homestead lots leased by the subscribers from the Hawaiian Government.

"Now therefore, the subscribers contract and agree with the Company that in case any of them shall be unable or shall for any reason fail or neglect to cultivate or otherwise care for such said crop and crops, then the Company shall be at liberty to enter upon the lots of such subscribers who fail so to cultivate and to cultivate and care for and bring to maturity such crop or crops in such manner as may be consistent with the approved methods

of cane culture in such locality. Provided, however, that such permission to the Company as to any lots shall end at any time when the Company gets in default regarding payments."

The subscribers agree that if, without fault of the Company, their leases shall be annulled or surrendered before the close of 1910, then the contract relating to such lots shall at once expire.

"It is further a condition of this agreement that none of the subscribers hereto shall be deemed in any wise liable to repay or recoup said Company for the expenses or any expense which shall be incurred by said Company in and about the cultivation and care of any crop of sugar cane herein contemplated or referred to, but that such cultivation and care if undertaken by said Company, shall be solely at its own proper cost and charge."

EXHIBIT D.

Memo of agreement arrived at at meeting of Thompson
Settlement Association.

Association to accept final survey—Plantation to enter into an agreement to farm on shares—Plantation to cultivate the lands and give Association as their shares enough of the products to amount to a fair rent to be agreed upon, this to be paid in cash in return for Association's share of sugar—rent to be paid every quarter, so the Association may have something to live on during the two years the law obliges them to live on the land—Plantation to furnish the money Association has to pay the Government—and to build the houses—all this to be an advance on the rent—before any is paid to the Association. In this way they can enter upon the land at once. In case the members do not care to retain the houses after the residence clause is fulfilled the Plantation to take the houses over at cost. Plantation to pipe water for domestic purposes to the houses—houses to not cost over three hundred dollars each—Association members to reside

on the lands and fulfill residence clause to acquire title—Planting agreement to last for twenty-one years from time lease is signed—Members to have right to sell land after perfecting title if they so wish, giving preference to purchase to other members first—then to Plantation—Association to in no way interfere with the Plantation's methods of cultivating the lands and only retaining a space of one acre each for house lot—any *pasture land* belonging to the different lots to be retained by the owner of the lot while residing thereon. Acreage to be entitled to rental to be the *actual acreage planted* and cultivated in cane by the Plantation or others under the Plantation. After the title has been perfected and Association has *deeds* rent to be paid annually in advance. All agree that Plantation shall be treated justly as it is to the interest of all concerned to make this enterprise a successful one and thus answer the criticisms that have been advanced that the Association only wanted these lands for speculation. All members express their concurrence in this and are prepared to perform their part of the agreement in full.

All agreements to be between the Association and the Attorney of the Plantation and Association is willing to enter into this agreement as soon as lands are allotted.

Association prefers to enter upon the lands and reside *at once* without waiting until end of first year as they wish to complete residence clause at once.

All canes and rattoons now growing or that may be growing when lease is signed to belong to the Plantation and all claims will be released so that Plantation may come into ownership of same at once.

(Undated, but received May 16, 1907.)

EXHIBIT E.

Waiohinu, Kau, Hawaii,
Dec. 17th, 1907.

Hon. H. E. Cooper,
Atty. Hutchinson Sugar Plantation Co.,
Honolulu, T. H.

Dear Sir:

Yours of Dec. 13th to hand. And while we regret that you must delay meeting with us until the first of the New Year, we appreciate the reasons you give. We do not fear that any loss will come to us in consequence of this delay if we come to an understanding with the H. S. P. Co., but we do fear that we may jeopardize our interests in other directions in too long waiting, and consequently trust the matter will not be further deferred.

The proposition you refer to as coming from Mr. Hewitt was simply extracts from the minutes of a meeting of the Association showing to some extent the feelings of the members present and was in no sense official. However, we have no doubt that any agreement you may submit will be accepted if we consider it fair. We are looking for results and the means to that end is not important, but as you say the matter is of such a nature that it cannot be arranged by correspondence. If you have a draft of a contract why not send it to us by return mail so that we may form an opinion regarding it, as we have no record of it here.

Pending some understanding we insist that all trespass of whatever kind on the premises must cease, and would suggest that you notify the representative of the H. P. S. Co. at Naalehu to keep off the lands. It will do much to remove friction and insure pleasant relations.

Yours very truly,

Executive Committee Thompson Settle. Association,
per (Signed) F. C. EATON,
Secretary.

EXHIBIT F.

Hon. H. E. Cooper,
Atty. for Hutch. Sugar Plant. Co.,
Honolulu, T. H.

Dear Sir:

Yours with draft of Agreement to hand. It seems to embody our intentions according to the understanding when you were here. Some parts of it seems to be a little ambiguous, however, and you have omitted some points that we are sure you intended to incorporate in it.

And feeling that much unnecessary time will be consumed if we attempt to settle matters by correspondence, we have by this mail requested Mr. C. W. Ashford, our attorney, to meet with you to formulate a document that will be satisfactory. We have instructed him as to the slight changes we desire, and feel certain that you will experience no difficulty in getting things into shape.

We would like to call your attention to the fact that, as we are obliged to reside in the houses for at least two years it is important that they be so located as to allow us most comfort. And we cannot submit to any interference from Mr. Wolters, as we are sure no good results would follow with him as a party. We will, however, select locations on roads when possible and will endeavor to build in groups. If you will designate any other man than the one mentioned to represent the Company, we will agree to locate where it is mutually agreed upon. The houses to be of T & G lumber and of the design mentioned, 20x12 with 10x10 lean-to in rear, and 6 foot veranda in front, to be finished within three months from execution of Contract. The T. S. A. to name the order in which the houses shall be built. If Company cannot finish them within the three months then the Planter may be allowed to build in accordance with the stipulations above, the Co. to advance up to \$300.00.

You do not state any time at which payments are to be made, and we would suggest that they be in yearly or half-yearly pay-

ments in advance, according to custom, dating from Jan. 1st, 1908.

You also refer to "lands under cultivation," we have informed Mr. Ashford that it is intended to mean, all land held by us from the Territory as Agricultural Land, which means cane lands, Pasture Land of course is excepted. And the \$8.00 is to be paid on every acre of such land during the continuance of the Agreement whether the Company cultivates it or not.

We have further instructed Mr. Ashford that if in his opinion it Might be possible that we be obliged to fall back on the contract portion of your draft, that it should be made more equitable, and on the lines of similar contracts in other places. However, all we require is to have the Agreement so drawn that there can be no mistaking its intentions, and that it meets with the approval of the Land Commissioner.

After you have agreed upon the matter, why not send up the Contracts and checks to pay same to Senator Hewitt, who is the Co.'s Attorney here, let him obtain our signatures, pay us and transmit the papers to you.

Find herewith list of Planters, acreage of cane land, etc., as follows:

Name of Planter.	No. Lot.	No. Lease.	No. of Acres.
Lyman R. Thompson.....	9	92	56.1
Bertha B. Taylor.....	21	84	48.6
Lillie K. Auld.....	25	85	34.
Geo. C. Hewitt.....	10	88	49.3
Jennie B. Jones.....	11	87	30.7
John Kekuaa	14	86	51.1
Geo. J. Green.....	18	83	48.2
Walter H. Hayselden.....	17	91	43.3
Same L. Rogers.....	5	90	55.
Lou H. Rogers.....	6	93	51.6
Charles G. Macumber.....	12	89	50.3
Floyd C. Eaton.....	8	82	50.8

From this acreage will have to be deducted one acre from each lot for the purpose of locating house and for planting the necessary trees.

Yours very respectfully,

Executive Committee T. S. A.

(Signed) F. C. EATON,

Waiohinu Kau, Hawaii,

Secretary.

Jan. 18, 1908.

EXHIBIT G.

Interview published in "*Advertiser*" of July 30, 1911.

ISSUES PLAIN WARNING TO FAKE HOMESTEADERS

GOVERNOR FREAR TELLS OF FRAUDS UPON HAWAII—BONA FIDE SETTLERS WANTED, BUT NO SPECULATORS

The Territory of Hawaii, through Governor Frear, has declared war on fake homesteaders. The Governor, yesterday, issued a plain warning to this class of gentry and at the same time made it plain that the administration wishes that every effort should be made to assist and encourage bona fide settlement. The following statement was made by the Governor in answer to requests by the *Advertiser* for information with respect to the investigation of homesteads on Hawaii by the attorney-general's department.

During the last two years the government has been collecting information in regard to every one of the 2230 lots disposed of as homesteads from the enactment of the present land laws to their recent amendments, that is, during about fifteen years, whether

the lot has been patented, forfeited, surrendered or is still held with a view to obtaining a patent or homestead lease. The object of this inventory or census, as it were, of the homesteads is to ascertain accurately the status of each homestead, with special reference to whether it has been a success or a failure and why, in order that we may know better what course to pursue in the future.

BOGUS HOMESTEADING.

More recently, in consequence of applications for patents for a number of lots of cane lands which were taken as homesteads in 1907 and in consequence of certain known or reported facts and of suspicious circumstances appearing upon the face of the applications, a special investigation has been made by the attorney-general's department with a view to ascertaining whether the applicants are entitled to their patents, and to obtaining and disseminating information which will tend to more successful homesteading hereafter by enabling the administration to guard more effectually against evasions of the spirit of the homestead laws, by impressing on homesteaders what their rights and duties are and by creating a sane public sentiment on this subject.

The results of this investigation are most discouraging to homesteading as hitherto conducted and most convincing that certain policies recently adopted in methods of homesteading, especially in the case of cane lands, should be pursued hereafter and even further developed in order to insure against bogus homesteading.

This investigation covered 58 homesteads, averaging 33.98 acres each and aggregating 1,970.8 acres, which were sold at an average price of \$924.47 a lot and an aggregate price of \$53,619.55, or say, from one-third to one-sixth of their real value. This is practically all cane land, highly cultivated up to the time it was homesteaded, and constitutes nearly one-half of all the cane land that has been homesteaded.

FOUR GROUPS INVESTIGATED.

Four groups of homesteads were investigated, namely: 12 homesteads comprised in the Thompson Settlement Association

at Kaunamano on the Hutchinson plantation in Kau, all under right of purchase leases; 14 comprised in the Osorio Settlement Association at Kaiwiki III on the Hakalau plantation in North Hilo, all under right of purchase leases; 13 homesteads on the Opea-Peleau land on the same plantation, all under right of purchase leases; and 19 homesteads on said land at Kaiwiki III, all under cash freehold agreements.

Two general distinctions may be observed, namely, one between the right of purchase lease and the cash freehold agreement, with reference to the ease with which the spirit of the homestead laws may be evaded and consequently with reference to the remedies, if any, available for preventing fake homesteading, and the other between the group of homesteads on the Kau side and the three groups on the Hilo side of the island, with reference to the methods that have been pursued by the homesteaders. The first of these distinctions need not be referred to further at this time.

FEUD EXISTED.

On the Kau side the 12 lots average 48.64 acres and aggregate 583.7 acres in area. There had long existed a feud between the plantation or its manager and at least some of the homesteaders,—a feud which apparently has continued to the present time. As to the degree of blame attaching to either or both sides nothing need be said here. Suffice it to say that a right attitude both of a plantation management towards homesteaders near or within the boundaries of the plantation and of such homesteaders towards the plantation is of extreme importance to the success of homesteading. Usually the plantation has the advantage. In this case the homesteaders had the “whip hand,” for there were many thousands of dollars worth of cane growing upon the land planted by the plantation when the homesteaders took it, thus enabling the homesteaders to make practically what terms they pleased with the plantation.

Before obtaining their lots, they endeavored to get one hundred acres apiece, claiming that they all understood farming, that each could handle that area, that they were sincere in their in-

tentions to cultivate the land thoroughly and intended to carry out all the conditions and much more—as shown by their letters on file in the land office.

VIOLATE THE LAW.

Soon after they obtained the lots they submitted, through their attorney, to the land commissioner for approval, an agreement with the plantation under the guise of a planting contract for three calendar years, or practically the period required in order to get a patent.

Under this agreement the plantation was to erect a house for the homesteader, to cost not more than \$300, upon a portion of the lot not to exceed an acre, the homesteader to give a mortgage to the plantation for the cost, but the plantation to take over the house for the amount of the mortgage at the end of the three years if the homesteader did not desire to remain longer on the lot.

The plantation was to cultivate and harvest in cane all the rest of the land and divide equally with the homesteader, who was not obliged to do anything, but with a proviso that the homesteader's share should be not more than at the rate of \$8.00 per acre per annum and also that it should be not less than that amount; in other words, the agreement was in effect a straight lease to the plantation at \$8.00 per annum per acre for all the land except the acre upon which the homesteader was to live during the period of prove-up.

The law forbade the assignment by a homesteader of his interest or any part thereof under a right of purchase lease without the consent of the commissioner, and his consent to this agreement was sought presumably on the view that the agreement might be construed as such an assignment though under the guise of a planting contract. The commissioner, of course, refused to approve a proposition so bald and so obviously violative of the spirit of the homestead laws.

A "LEGAL EVASION."

Thereupon the attorneys for the plantation and the homesteaders devised a different agreement, which was executed without the approval of the commissioner, and which presumably was supposed to be in technical compliance with, or, if you please, a legal evasion of the law. It was for the same three calendar years.

It did not cover the construction of the house, but the entire rent for the first year was to be paid in advance, and there was no provision that the plantation should do the cultivating (also none that the homesteader should do it), but there was a naive provision that if the homesteader failed to do the cultivating the plantation should not be entitled to deduct the cost of cultivation from the homesteader's share of the crop, and by a collateral agreement of the same date it was agreed that in case the homesteader should fail to do the cultivating the plantation could enter upon the land and do it, with a precautionary clause that if the homestead should be forfeited during the period of the agreement the agreement should terminate.

The principal agreement purported to be an agreement for the sale of the crop each calendar year and the price at which it was to be sold was exactly \$8.00 per annum per acre of the area cultivated; in other words, it was in effect, whether in law or not, a lease of the land at \$8.00 per acre per annum.

TECHNICAL COMPLIANCE.

The rental was payable in advance for the first year and semi-annually in advance for the other two years. It was immaterial whether any crop was harvested during the year or not, and of course, in some cases no crop was harvested during the year, because it takes more than twelve months and, indeed, in that locality eighteen months or more for a crop to mature; in one case, for instance, when the crop was harvested near the end of the second year, the land was allowed to go practically to weeds and grass during the next year, because the homesteader did not propose to do the cultivating and the plantation could not obtain a

crop before the end of the third year. The rent, called the price of the crop, had to be paid, however.

In general a small garden was cultivated by the homesteader on the house lot but in some cases this amounted to almost nothing, and in a very few cases some cane was cultivated before the end of the third year. In most cases, after the expiration of the three years, what was deemed just enough land, namely, 25 per cent. of the area, was cultivated, but at least in some cases without fertilizer and in most cases very poorly, apparently for the purpose of complying technically with the law in order to obtain a patent.

SOMETHING FOR NOTHING.

The purchase price of these lots was \$8,245.00 in the aggregate, the first-class cane land having been obtained at the rate of \$15.00 per acre and less valuable land at correspondingly lower prices, the land being worth probably at least four times that price. The amounts, practically rent, received during the three years by the homesteaders from the plantation under the agreement referred to, amounted to \$12,932.60, that is, to \$4,687.08, or 58 per cent more than the total cost of the land, or a profit of \$390.63 on the average for each lot—probably enough in most cases to cover or more than cover the cost of the house.

On the Hilo side, the three groups of homesteads present a somewhat different situation. There was apparently no friction between the plantation and the homesteaders, but the plantation, at least in some cases, was in entire harmony with the homesteaders, not indeed because it favored the homesteading of its cane lands, but because it desired to make the best of a disagreeable matter by endeavoring to get friendly rather than hostile homesteaders on the land.

In general the lots were smaller than on the Kau side, ranging from an average of 27.99 acres in one group to an average of 33.21 in another group, as compared with an average of 48.64 on

the Kau side. The homesteaders were mostly Portuguese and Hawaiians, while on the Hilo side they were mostly Anglo-Saxon.

OBVIOUS FRAUD.

On the Kau side, the homesteaders in general had pretty good cottages, and apparently some, perhaps most of them, intend to make their homes there, while on the Hilo side the great majority apparently never intended to make their homes there. For instance, a typical case is that of a person having a 12'x12' one room shack, sleeping there at night much or most of the time for exactly two years, the time supposed to be required by the statute, and then abandoning the place, and even during the two years taking his meals elsewhere and working elsewhere.

Again, in the matter of tree planting, on the Kau side the conditions have been in general very well performed while in the majority of cases on the Hilo side that has been far from the case.

For instance, a typical case is that of a person planting trees, perhaps just before the expiration of the three years, and perhaps by merely sticking them in the ground, so close together that they cannot possibly thrive, and then neglecting them to be choked with weeds and grass; in some cases practically no trees were planted, the homesteader relying on wild trees growing on gulch sides.

In the matter of cultivation, aside from small gardens about the house, and in some cases there were not even these, in most cases this was done entirely by the plantation from first to last under an agreement differing somewhat from that on the Kau side. In these cases the agreement was more like a share planting contract in form, although apparently many of the homesteaders looked upon it as intended to yield a definite sum, namely about \$5.00 per acre per annum.

LITTLE REAL CULTIVATION.

It was in substance an agreement by which the homesteader should cultivate the land and sell the cane to the plantation and

the plantation should make advances to the homesteader, but in case the homesteader should fail to do the cultivating the plantation might enter and do it itself, and by a letter written at about the same time, in some cases at an earlier date, the homesteader informed the plantation that he could not do the cultivating. In most cases he not only did not, but obviously never intended to, do any of the cultivating. The plantation was to keep an account, paying for the cane on a sliding scale according to the price of sugar and deducting the amount of advances, and also cost of cultivating in case it should do the cultivating itself.

As a rule the homesteaders did not know even approximately how they stood financially. In one group there was the interesting feature of five of the homesteaders being closely connected by blood or marriage. In the largest group the homesteaders were practically all plantation employees,—two blacksmiths, four carpenters, three teamsters, a storekeeper, an overseer, a common laborer and others, including one who is said never to have worked at all. These continued in their respective occupations and apparently never intended to do any cultivating.

GOVERNOR'S COMMENT.

The foregoing is a brief statement of the results of the investigation in outline, without embellishments, details or names. The facts speak for themselves; little comment is needed or will be made at this time. The cases vary somewhat in details but exhibit a singular general uniformity in several groups. In some cases there probably has been a real desire to live up to the spirit as well as the letter of the law, although in some of these there has been a very inadequate idea of what the spirit of the law calls for. In other cases there may have been success in evading the spirit of the law and yet complying technically with its letter.

As to the legal rights of the several claimants with reference to obtaining patents no opinion is expressed. This statement has to do only with questions of policy. Several representative cases may be referred to the courts for adjudication on the legal questions involved, not alone for the immediate purpose of settling the

cases in hand but also for the larger purposes of determining questions of administrative policy in the future and making it clear to homesteaders what may and what may not properly be done.

DEMORALIZING SENTIMENTS.

There exists a widespread sentiment, encouraged largely by methods pursued in the past, that it is perfectly justifiable to obtain public land through forms of homesteading, however much the spirit of the homestead laws may be evaded, provided there is a technical compliance; not only that, but an also widely prevalent idea that the requirements of the homestead laws are not intended as tests of good faith or for the purpose of insuring real homesteading, but that they are purely artificial requirements, technical compliance with which is the consideration for the land; as if, for instance, it were for the public weal to give out valuable land at a small fraction of its real value in order to have the taker sleep a majority of the nights for exactly two years in a small shack on the land, cultivate only an insignificant part of it himself and lease practically the whole of it to someone else, instead of making his permanent home on the land and supporting himself and his family from his own cultivation of it and so adding materially to good citizenship. These demoralizing sentiments constitute one of the obstacles in the way of successful homesteading, and they do not stop here but extend disastrously into politics. It is important that such sentiments be eliminated, and the sooner the easier and the better.

CHANGES NEEDED.

It is obvious that the administration cannot ascertain intentions in advance and an attempt to discriminate in advance, in respect of good and bad faith, between those who profess to desire to become genuine homesteaders is of course out of the question. Homestead conditions must be made such, so far as practicable, as will themselves discriminate automatically between mere specu-

lators and those who really desire to carry out the spirit of the homestead laws. The general aim should be to prescribe such conditions as will not work hardships on those who act in good faith but which such persons will, from the very nature of the case, desire to perform anyway, but which will remove the inducements from those who desire homestead lots for purposes merely of investment or speculation.

It is, of course, unwise and unjust as a rule to homestead land with growing cane upon it. It discourages industry on the part of the plantation and encourages speculation and greed on the part of professed homesteaders; it is unjust to a planter to induce him to plant a crop and cultivate it for a while under a lease and then withdraw the land, under the withdrawal clause for homesteading, before the crop is harvested. Cane land, when homesteaded, should be surveyed and advertised so that the drawing will be held, so far as practicable, just before the cane is harvested, the homesteaders to take possession immediately after the harvesting, so that both planter and homesteader may know what to expect and be able to prepare accordingly; so that no injustice may be done to the planter; and so that the homesteader may proceed at once with the cultivation and not be put to the disadvantage of having the land go to weeds during an interval between harvesting and his becoming entitled to possession,—especially when a ratoon crop is to follow, and as a rule, so far as practicable, the land should be homesteaded only when a plant crop is to follow.

UTTERLY INAPPROPRIATE.

Perhaps the most obvious inference is that the forms of homesteading known as the right of purchase lease and the cash freehold agreement are utterly inappropriate to cane lands. It is hoped that one of the worst features of those methods has now been removed by the recent amendments of the Organic Act, which contain sweeping and stringent provisions against transfers in any way, directly or indirectly, by homesteaders, without the consent of the land commissioner and the governor.

If the practice which has prevailed and been claimed to be within the law, as to homesteads issued before those amendments were enacted, is really within the law, a homesteader, under a right of purchase lease theretofore issued, for instance, may lease outright or if not outright, indirectly, practically all of the homestead to a corporation or an alien at a good rental for 21 years, meanwhile paying a fraction of that amount to the government, and then at his option obtain a patent or abandon the land without ever having turned a square foot of sod upon it by way of cultivation by or under himself. Improved or developed lands should, as a rule, be homesteaded only by the special homestead agreement method.

HIGHER PRICES SUGGESTED.

The price at which cane land is disposed of for homestead purposes may well be made to bear a closer relation to the real value of the land than has hitherto been the case. Terms of payment should be made easy, but to give out valuable lands at a small fraction of its actual value invites speculation and is unfair to the public. On the mainland when land is improved by reclamation its price is increased accordingly. This should be done where land has been improved in the same way or in other ways here.

The idea of getting something for nothing should be discouraged. In most cases heretofore, even in the case of valuable cane lands, the price obtained has not been enough even to construct suitable roads for the homesteaders on such lands. By charging higher prices more money will be available to make homesteading on such lands a success by the construction of such roads.

A fair price for the land may easily be paid under the terms now prescribed in the special homestead agreement by any bona fide homesteader out of the products of the land. Hitherto, the homesteader of such land has been able whether lawfully or unlawfully, to remain idle or work elsewhere, lease his land to a plantation and obtain enough rent in three years to pay for his land, and in some cases also for his house and all other improvements, thus obtaining the land for nothing and doing nothing as a bona fide homesteader.

CULTIVATION REQUIREMENTS.

In the matter of cultivation, under a right of purchase lease, a homesteader may allow the entire land, even highly developed cane land, to run to grass and weeds until just before the end of the third year, and then need cultivate only 5 per cent. of the land. He should be required, especially in the case of cane land, to cultivate a much larger percentage and at a much earlier date, as is required under the special homestead agreement, so that assuming that he cannot lease the land to others, he shall not be allowed to allow it to run to weeds and thus waste it, as has been done in some cases even before the recent amendments of the Organic Act.

The matter of the size of homestead lots, especially on cane lands, is one that until recently has been given little attention, or one that has been dealt with on ideal lines that have seldom been realized and consequently with most disastrous results. Applicants clamored for 50 or 100 acres of cane land who would not or could not properly handle more than a small fraction of that area, and the land has been divided and given out accordingly on the theory that an enterprising American with capital who understood farming needed so much land, while as a matter of fact in almost every case the land was taken, as might be expected, by persons far from that class.

COMPLICATED PROBLEM.

There is hardly any phase of the complicated and difficult problem of homesteading in this Territory of greater importance than this. The land should be divided with special reference to the capacity of those who propose to take it, and considering the high productivity of the land and the large amount of capital required to cultivate it. The lots should be made of different areas according to many varying circumstances and, if the lots are made small enough, the homesteaders may be given the option of taking one lot or two or even more adjoining lots, but under conditions which will make it inadvisable for them to take more

than they can handle, thus allowing the matter to be determined largely automatically and by the homesteaders themselves. They should then be held up to the requirements of cultivation and allowed to retain only so much as they can properly cultivate.

Hitherto homesteaders of cane lands have as a rule obtained far more than they would or could take care of, with the result that in most cases they have either allowed the land to go to weeds or have practically leased it to others and lived on the income without performing any of the requirements of a bona fide farmer themselves. The result has been that instead of homesteading the land, the government or the public has simply made gifts in the nature of bonuses or of pensions to fake homesteaders.

FATTEN AT PUBLIC EXPENSE.

Fifty acres, for instance, have been given to a person who would not or could not take care of more than from one to ten or twenty acres; in some way he has been able to scrape through and get his patent, say, at the end of three years, and then has sold the land, say, to a corporation and procured from \$1000 to \$5000; the government has practically sold the land to the corporation through the ostensible homesteader as a real estate agent, paying him the entire price of the land, more or less, as a commission; the government might as well have sold the land directly to the corporation and made a gift of the purchase price to the go-between; or, again, the homesteader, whether before or after obtaining his patent, has leased the land to a corporation at a good rental, paying the government a small fraction of the rental, and thus obtaining the difference practically as a pension; the government might as well have leased the land directly to the plantation and paid the greater part of the rent directly to the go-between.

It is hardly necessary to remark that no such individual has any such claim on the public exchequer or on the public property. The public does not owe any man a living, and should not thus discriminate under the guise of homesteading in favor of some, the unworthy, and against others, the worthy. The fifty acres,

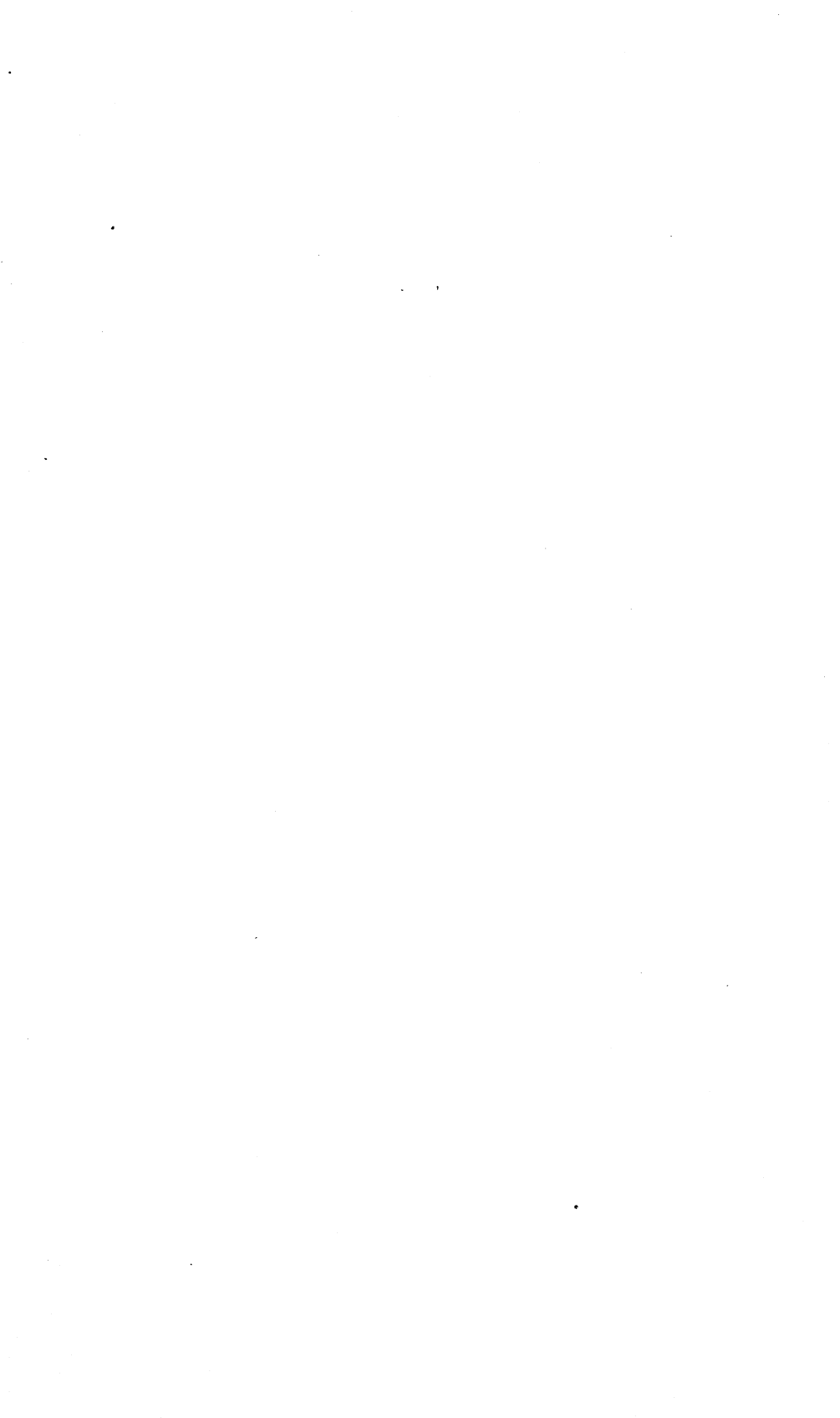
instead of being presented to one speculator, would better be sold at fair prices to five or ten genuine homesteaders, who will build real homes upon it, highly cultivate it and add to the desirable citizenship of the Territory.

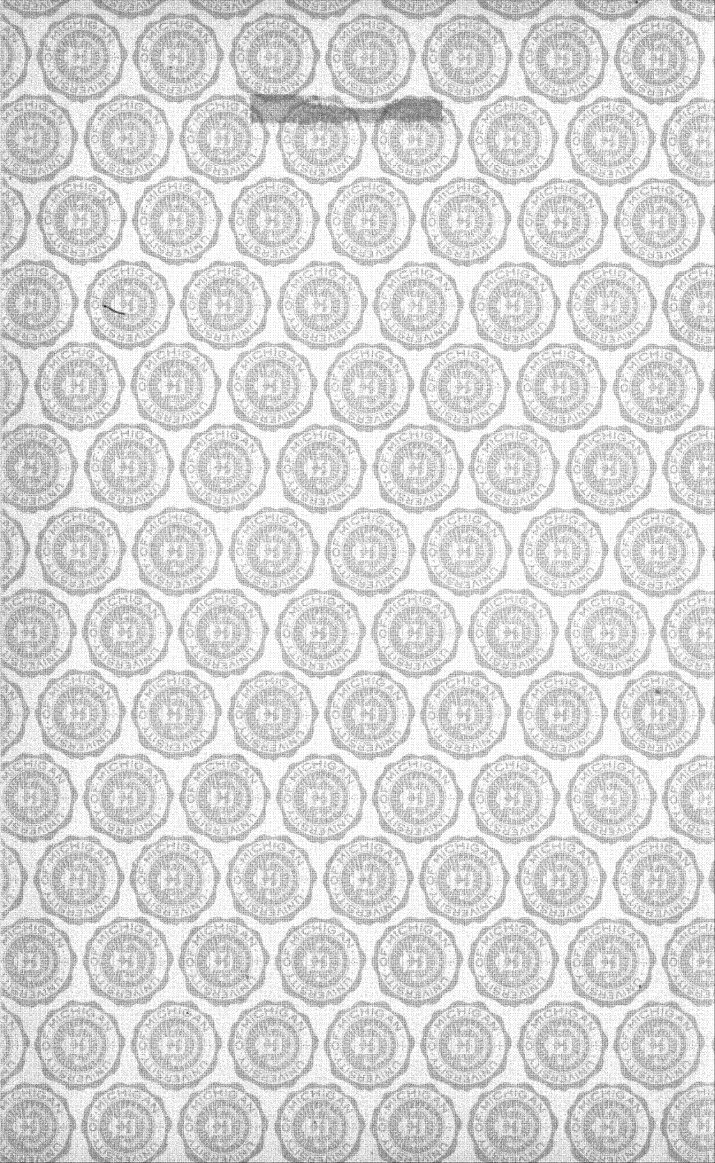
There is very little cane land and, indeed, all too little of any good agricultural land available for homesteading in this Territory. The importance to the permanent welfare of the Territory politically, socially, industrially and financially is too great to allow it to be wasted. The subject of homesteading must be treated in a sane and scientific manner; it cannot be treated sentimentally or as a matter of politics, although, when it comes to politics, honesty is, as in other matters, very apt to be the best policy.

Every effort should be made to assist and encourage bona fide homesteaders, but just as certainly every effort should be made to thwart mere speculators. The greed of special interests when operating against the public interests should be checked in all cases and under all circumstances, whether it operates on a small scale or on a large scale and under whatever forms it may attempt to disguise itself. The speculators are the ones that make the most noise and of course always on pretenses of good faith.

Confidence, however, may as a rule safely be placed in the right disposition of the public. The public may generally be depended upon to support the right, the genuine,—provided that it understands what is of that character, that is, provided it understands the facts.

It is simply a question whether policies in the all important matter of homesteading shall be determined by the clamor of fakes or by the interests of the people at large and of sincere homesteaders.





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